



2025:DHC:6369



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

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*Date of decision: 28<sup>th</sup> July, 2025*

+ ARB.P. 817/2025 with I.A. 13568/2025

M/S SHELL INDIA MARKETS PVT. LTD.  
THROUGH ITS AUTHORISED REPRESENTATIVE  
MS. DIVYA SONI .....Petitioner  
Through: Mr. Sanjay Kumar, Advocate.

versus

MS. MOHINDER GARG (SOLE PROPRIETOR OF  
M/S SAI MOTORS) .....Respondent  
Through: Mr. Amarjeet, Mr. Vikash Shaharavat  
and Mr. Prasanjeet Yadav, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE AMIT BANSAL**

**AMIT BANSAL, J. (Oral)**

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter '**Act**') seeking appointment of a Sole Arbitrator for the adjudication of disputes between the parties arising out of a Business Development Fund Agreement dated 4<sup>th</sup> August, 2016 (hereinafter '**Agreement**') entered into between the parties in terms of which the petitioner advanced an amount of Rs. 40,00,000/- as business development fund for the respondent's business. As per the Agreement, the respondent committed to purchase the petitioner's products for a continuous period of three years and to use the aforesaid amount for purchasing/ constructing the equipment/ facilities for business purposes.



2. Counsel for the petitioner submits that the Agreement contains an arbitration clause, *i.e.*, Clause 20, which provides for adjudication of any dispute arising between the parties by way of arbitration. Clause 20 of the Agreement is set out below:

**“20. Arbitration**

*If at any time hereafter any disputes, differences or question shall arise between the Parties hereto with respect to construction, meaning or effects of this Agreement or any clause herein contained or the rights and liabilities of the Parties hereto, every dispute, difference or question shall be settled by mutual negotiation to be carried over 15 days from the date of either party expressing its intention of a dispute existing between parties. In the event of failure to resolve the dispute through negotiation, the dispute shall be referred to arbitration to be conducted by a sole Arbitrator and the decision of such arbitrator shall be final and binding on both the Parties hereto. Such arbitration proceedings will be held in New Delhi. Subject to aforesaid, provisions of Arbitration and Conciliation Act, 1996 or modifications or re-enactment thereof will apply. The Rules of London Court of International Arbitration, India shall apply to such proceedings.”*

3. It is also submitted that Clause 23 of the Agreement provides that the Courts at New Delhi shall have jurisdiction with respect to all proceedings arising out of the Agreement. Clause 23 of the Agreement is reproduced hereinbelow:

**“23. Governing Law & Jurisdiction**

*This Agreement shall be interpreted and have effect in all respects with the laws of the Republic of India. Subject to the arbitration provisions, the Parties hereby submit to the exclusive jurisdiction of Courts at New Delhi for any proceedings in connection with this Agreement.”*

4. He further submits that the respondent *inter alia* failed to make timely payments towards the amortization of the aforesaid business development fund and defaulted in her commitments towards minimum guaranteed purchases of the petitioner’s products.

5. Accordingly, the petitioner, on 28<sup>th</sup> September, 2018, raised an invoice to the respondent for the recovery of the aforesaid business development fund



in terms of Clauses 8 and 9 of the Agreement. However, the respondent failed to make any payment to the petitioner.

6. Subsequently, on 18<sup>th</sup> April, 2019, the petitioner issued a legal notice demanding payment of the outstanding amount with interest @ 18% per annum. The respondent initially communicated her intention to make the outstanding payment to the petitioner, however, later disputed the outstanding amount in her reply to the legal notice.

7. Due to the aforesaid, the petitioner, on 5<sup>th</sup> March, 2020, issued a Dispute and Negotiation Notice under Clause 20 of the Agreement. The petitioner thereafter sent a notice dated 14<sup>th</sup> May, 2024 to the respondent under Section 21 of the Act invoking the aforesaid arbitration clause.

8. It is submitted that the aforesaid notice was duly served upon the respondent on 14<sup>th</sup> May, 2024 through email. However, despite the aforesaid, the respondent neither replied to the said notice nor did she agree for constitution of the Arbitral Tribunal. Under these circumstances, the petitioner has been constrained to approach this Court under Section 11(6) of the Act.

9. Notice in the present petition was issued by the predecessor bench on 27<sup>th</sup> May, 2025.

10. Counsel enters appearance on behalf of the respondent and submits that the claim, which is the subject matter of the present petition, is time barred.

11. To be noted, counsel for the respondent candidly admits to the existence of the aforesaid arbitration clause.

12. A reference in this regard may be made to the judgment of the Supreme Court in **SBI General Insurance Co. Ltd. v. Krish Spinning**, 2024 SCC OnLine SC 1754, wherein it was observed as follows:



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

“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]”

(emphasis supplied)

114. In view of the observations made by this Court in *In Re : Interplay* (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in *Vidya Drolia* (supra) and adopted in *NTPC v. SPML* (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in *In Re : Interplay* (supra).

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118. Tests like the “eye of the needle” and “ex-facie meritless” although try to minimise the extent of judicial interference, yet they require the referral court to examine contested facts and appreciate prima facie evidence (however limited the scope of enquiry may be) and thus are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal.”

13. The aforesaid judgment clearly holds that the parties must be referred to arbitration if the Court is satisfied that there exists an arbitration agreement between the parties and their dispute is covered within the arbitration clause.



14. In view of the above, the present petition is allowed and the dispute between the parties under the Agreement are referred to the Arbitral Tribunal comprising of a Sole Arbitrator. The following directions are issued in this regard:

- a. Mr. Tarang Gupta, Advocate (Mobile No.: 78389 83455) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- b. The arbitral proceedings shall be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter '**DIAC**').
- c. The remuneration of the Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- d. The Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference. In the event there is any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application before this Court.
- e. It is made clear that all the rights and contentions of the parties, including preliminary objections with regard to limitation and/ or arbitrability of any of the claims as well as claims/ counter-claims of either of the parties on the merits of the dispute including the defence of the respondent that no amount is due and payable to the petitioner, are left open for adjudication by the Arbitrator.
- f. The parties shall approach the Arbitrator within two (2) weeks from today.

15. The petition stands disposed of in the aforesaid terms.

16. All pending applications stand disposed of.



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17. Needless to state, nothing in this order shall be construed as an expression of this Court on the merits of the case.

**JULY 28, 2025**

*Vivek/-*

**AMIT BANSAL, J**