



2026:DHC:1941



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

Date of Decision: 09.03.2026

+ O.M.P.(I) (COMM.) 406/2025 & I.A. 27734/2025 (For Early Hearing)

HERO FINCORP LIMITED

.....Petitioner

Through: Mr. Harsh Sinha and Ms.
Anushka Verma, Advocates

versus

BEST HAWK INFOSYSTEMS PRIVATE LTD & ORS.

.....Respondents

Through: Mr. Sandeep Sharma, Senior
Advocate with Ms. Ridhima
Goyal, Mr. Saif Uddin Khan
and Ms. Kavya, Advocates

CORAM:

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (ORAL)

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been filed under Section 9 of the **Arbitration and Conciliation Act, 1996¹** seeking the following reliefs:

“.....

(a) Pass appropriate orders directing the attachment of the bank accounts and the credit balance lying therein in respect of the bank accounts of Respondent No. 1/ BEST HAWK INFOSYSTEMS PRIVATE LTD., having PAN number AAECB3642C:

¹ The Act



2026:DHC:1941



S. No.	Account Number	Bank Name	Account type	IFSC Code
1.	92403003 2263079	AXIS Bank	Current	UTIB00007 92
2.	49909283 1001	HSBC Bank	Current	HSBC0110 007

(b) Permit the Petitioner to appropriate the credit balance in the bank accounts mentioned in clause (a) and adjust the credit balance against the dues in the Loan Account No. HFCNOIXCF00000222101;

(c) Direct the Respondents to furnish alternate security in the form of FDR/ immoveable property/ etc. in the sum of 3,74,32,640.33, as on 15.09.2025 in the name of the Petitioner or deposit such security with this Hon'ble Court;

(d) Pass ex-parte ad-interim orders in terms of prayers (a) to (c); and/ or

(e) Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. Learned counsel appearing for the Respondents submits that the Respondents do not dispute their liability in respect of the payment claimed by the Petitioner. It is further submitted that the Respondents had earlier placed a proposal on record for ensuring discharge of the said payment within a stipulated timeframe, however, as the said proposal has not found favour with the Petitioner, the Respondents propose to place an improved proposal for consideration.

3. Learned counsel for the Respondents with respect to the admitted liability puts caveat that the aforesaid admission of liability is subject to reconciliation of accounts.

4. This court heard the submissions made by both parties on viability of the Respondents' proposal and its acceptance by the Petitioner.

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O.M.P. (I) (COMM.) 406/2025

Page 2 of 9



2026:DHC:1941



5. At this stage, learned counsel appearing on behalf of the parties are *ad idem* that the matter may be referred to arbitration for the adjudication of disputes as between the parties by a learned Sole Arbitrator appointed by this Court. They, therefore, waive off the requirements of notice under Section 21 of the Act as well as the need for filing a separate Petition under Section 11 of the Act for appointment of an Arbitrator.

6. It is further requested that the arbitration be conducted under the *aegis* of **Delhi International Arbitration Centre**².

7. The court takes note of the the Facility Agreement dated 17.01.2025, which contains the Arbitration Clause, being Clause 20.1, the relevant portion of which reads as under:

“20.1 All disputes, claims, controversy or difference or questions between the Parties arising out of or relating to the Facility Documents (including a dispute relating to the validity or existence of any Facility Documents) shall be referred to arbitration by a sole arbitrator where both parties shall mutually decide and appoint one Arbitrator. The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, including the statutory amendments thereof. The venue, place and seat of arbitration shall be New Delhi, and the language of the arbitration shall be English...”

8. It is apposite to note that the legal position governing the scope and standard of judicial scrutiny under Section 11(6) of the Act is no longer *res integra*. A three-Judge Bench of the Hon’ble Supreme Court in **SBI General Insurance Co. Ltd. v. Krish Spinning**³, after taking into consideration the authoritative pronouncement of the seven-Judge Bench in **Interplay Between Arbitration Agreements**

² DIAC

³ (2024) 12 SCC 1



2026:DHC:1941



*under Arbitration Act, 1996 & Stamp Act, 1899, In re*⁴, comprehensively delineated the contours of judicial intervention at the stage of Section 11 of the Act. The excerpt of *Krish Spg* (supra) reads as under:-

“(c) Judicial interference under the 1996 Act

110. The parties have been conferred with the power to decide and agree on the procedure to be adopted for appointing arbitrators. In cases where the agreed upon procedure fails, the courts have been vested with the power to appoint arbitrators upon the request of a party, to resolve the deadlock between the parties in appointing the arbitrators.

111. Section 11 of the 1996 Act 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. v. Patel Engg. Ltd., (2005) 8 SCC 618** and affirmed in **Vidya Drolia v. Durga Trading Corp., (2021) 2 SCC 1** that Sections 8 and 11, respectively, of the 1996 Act 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.

112. The difference between Sections 8 and 11, respectively, of the 1996 Act is also evident from the scope of these provisions. Some of these differences are:

112.1. While Section 8 empowers any “judicial authority” to refer the parties to arbitration, under Section 11, the power to refer has been exclusively conferred upon the High Court and the Supreme Court.

112.2. Under Section 37, an appeal lies against the refusal of the judicial authority to refer the parties to arbitration, whereas no such provision for appeal exists for a refusal under Section 11.

112.3. The standard of scrutiny provided under Section 8 is that of prima facie examination of the validity and existence of an arbitration agreement. Whereas, the standard of scrutiny under Section 11 is confined to the examination of the existence of the arbitration agreement.

⁴ (2024) 6 SCC 1



2026:DHC:1941



112.4. During the pendency of an application under Section 8, arbitration may commence or continue and an award can be passed. On the other hand, under Section 11, once there is failure on the part of the parties in appointing the arbitrator as per the agreed procedure and an application is preferred, no arbitration proceedings can commence or continue.

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.

117. In view of the observations made by this Court in *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re*, (2024) 6 SCC 1, 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 v. Durga Trading Corpn.*, (2021) 2 SCC 1 and adopted in *NTPC Ltd. v. SPML Infra Ltd.*, (2023) 9 SCC 385 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 *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re*, (2024) 6 SCC 1.

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

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O.M.P. (I) (COMM.) 406/2025

Page 5 of 9



2026:DHC:1941



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.

121. 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.

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

126. The power available to the Referral Courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the Referral Court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the Arbitral Tribunal at the nascent stage of Section 11, the Referral Courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected.

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O.M.P. (I) (COMM.) 406/2025

Page 6 of 9



2026:DHC:1941



127. Section 11 also envisages a time-bound and expeditious disposal of the application for appointment of arbitrator. One of the reasons for this is also the fact that unlike Section 8, once an application under Section 11 is filed, arbitration cannot commence until the Arbitral Tribunal is constituted by the Referral Court. This Court, on various occasions, has given directions to the High Courts for expeditious disposal of pending Section 11 applications. It has also directed the litigating parties to refrain from filing bulky pleadings in matters pertaining to Section 11. Seen thus, if the Referral Courts go into the details of issues pertaining to “accord and satisfaction” and the like, then it would become rather difficult to achieve the objective of expediency and simplification of pleadings.

128. We are also of the view that *ex facie* frivolity and dishonesty in litigation is an aspect which the Arbitral Tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the Arbitral Tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the Referral Court. If the Referral Court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the Arbitral Tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material.”

(emphasis supplied)

9. The decision in *Krish Spinning* (supra) thus unequivocally reiterates that the Referral Court, while exercising jurisdiction under Section 11 of the Act, is required to confine itself to a *prima facie* examination of the existence of an arbitration agreement and nothing beyond. The Court’s role is facilitative and procedural, *namely*, to give effect to the parties’ agreed mechanism of dispute resolution when it has failed, without embarking upon an adjudication of contentious factual or legal issues, which are reserved for the Arbitral Tribunal.

10. The material on record reflects that the approximate claimed value of the dispute involved in the present matter is Rs. 3.75 crores.

11. In view thereof, this Court is of the view that the matter may be

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O.M.P. (I) (COMM.) 406/2025

Page 7 of 9



2026:DHC:1941



referred to arbitration for the purpose of the resolution of disputes between the parties.

12. Accordingly, this Court hereby requests **Ms. Veena Ralli, Advocate (Mobile No. 9899987093)**, to enter upon the reference and adjudicate the disputes *inter se* the parties.

13. The arbitration would take place under the *aegis* of the DIAC and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

14. The learned Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12(2) of the Act within a week of entering the reference.

15. The learned Sole Arbitrator shall be entitled to fees in accordance with the Fourth Schedule of the Act or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

16. The parties shall share the learned Sole Arbitrator's fee and arbitral costs equally.

17. All rights and contentions of the parties are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

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

19. The present Petition under Section 9 of the Act shall be treated as an Application under Section 17 of the Act, and appropriate directions may be passed by the learned Arbitrator after entering upon

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O.M.P. (I) (COMM.) 406/2025

Page 8 of 9



2026:DHC:1941



the reference.

20. The parties are at liberty to raise all objections, including with respect to the jurisdiction of the learned Arbitrator, before the learned Arbitral Tribunal.

21. The Registry is directed to send a receipt of this order to the learned Arbitrator through all permissible modes, including through e-mail.

22. In the meanwhile, the parties are at liberty to try and settle their disputes.

23. The present Petition along with pending Application(s), if any, stands disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J.
MARCH 09, 2026/rk/kr

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