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

Date of decision: 10.02.2026

+ **ARB.P. 2124/2025**

NUFLOWER FOODS AND NUTRITION PRIVATE LIMITEDPetitioner

Through: **Mr. Anuj Berry, Ms. Gauri Pasricha and Ms. Jayati Sinha Advocates.**

versus

KAMDHENU FOODS PRIVATE LIMITED & ANR.

.....Respondents

Through: **Mr. Govind Rishi, Advocate for R-1.
Ms. Aparna Singh, Advocate for R-2.**

CORAM:

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

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JUDGEMENT (ORAL)

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition, under Section 11(6) of the **Arbitration and Conciliation Act, 1996**¹, has been filed seeking the appointment of a Sole Arbitrator for the purpose of adjudication of disputes *inter se* the parties, in terms of Clause 16, sub-clause 4 of the Terms and Conditions of the **Purchase Order** being **NFN/PO/2023-2024/0815 dated 23.09.2023**² issued by **Nuflower Foods and Nutrition Private Limited**³ in favour of **Kamdhenu Foods Private Limited**⁴.

2. Sub-clause 4 of Clause 16 of the Purchase Order, which is

¹ The Act

² Purchase Order

³ Petitioner

⁴ Respondent No. 1

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stated to be the Arbitration clause, reads as follows:

“4. Arbitration

Any dispute arising out of or in connection with this PO shall be settled by Arbitration in accordance with the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted in English in New Delhi by the sole arbitrator appointed by the Buyer. The cost of arbitration shall be shared equally between the parties unless decided otherwise by the arbitrator.”

3. Mr. Govind Rishi, learned counsel for the Respondent No. 1 has no objection to the matter being referred to the learned Arbitrator. However, he contends that the goods in question were manufactured and supplied by **Sunfresh Agro Industries Private Limited/Respondent No. 2⁵** and that Respondent No. 1 was merely a distributor on behalf of the Respondent No. 2.

4. Ms. Aparna Singh, learned counsel appearing on behalf of Respondent No. 2, raises an objection with regards to the maintainability of the present Petition as against the Respondent No. 2, on the ground that they are not the party named in whose favour the Purchase Order was issued and, therefore, there exists no privity of contract as between the Petitioner and Respondent No. 2.

5. The material on record indicates that, pursuant to the disputes that arose between the parties, a **Notice under Section 21 of the Act dated 02.10.2025⁶** was issued by the Petitioner, invoking Arbitration under the Terms and Conditions as set out in the above stated Purchase Order.

6. However, no Reply was forthcoming by the Respondent No. 1 *qua* the said Section 21 Notice. Respondent No. 2, *vide* Reply dated 05.11.2025, denied the existence of any disputes between the parties

⁵ Respondent No. 2

⁶ Section 21 Notice



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and, therefore, refused to give their consent for invoking arbitration.

7. Hence, the Petitioner has approached this Court by way of the present Petition seeking the appointment of a Sole Arbitrator.

8. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. This Court in ***Pradhyaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd***⁷ has extensively dealt with the scope of interference at the stage of Section 11. The Court held as under:-

“9. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. The Supreme Court in the case of *SBI General Insurance Co. Ltd. v. Krish Spinning*,¹ while considering all earlier pronouncements including the Constitutional Bench decision of seven judges in the case of *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899*, In re² has held that scope of inquiry at the stage of appointment of an Arbitrator is limited to the extent of *prima facie* existence of the arbitration agreement and nothing else.

10. It has unequivocally been held in paragraph no. 114 in the case of *SBI General Insurance Co. Ltd.* that observations made in *Vidya Drolia v. Durga Trading Corpn.*,³ and adopted in *NTPC Ltd. v. SPML Infra Ltd.*,⁴ 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 not apply after the decision of *Re : Interplay*. The abovenoted paragraph no. 114 in the case of *SBI General Insurance Co. Ltd.* reads as under:—

“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)*.”

⁷ 2025 SCC OnLine Del 3022



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11. *Ex-facie* frivolity and dishonesty are the issues, which have been held to be within the scope of the Arbitral Tribunal which is equally capable of deciding upon the appreciation of evidence adduced by the parties. While considering the aforesaid pronouncements of the Supreme Court, the Supreme Court in the case of *Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd.*,⁵ however, has held that the referral Courts under Section 11 must not be misused by one party in order to force other parties to the arbitration agreement to participate in a time-consuming and costly arbitration process. Few instances have been delineated such as, the adjudication of a non-existent and *malafide* claim through arbitration. The Court, however, in order to balance the limited scope of judicial interference of the referral Court with the interest of the parties who might be constrained to participate in the arbitration proceedings, has held that the Arbitral Tribunal eventually may direct that the costs of the arbitration shall be borne by the party which the Arbitral Tribunal finds to have abused the process of law and caused unnecessary harassment to the other parties to the arbitration.

12. It is thus seen that the Supreme Court has deferred the adjudication of aspects relating to frivolous, non-existent and *malafide* claims from the referral stage till the arbitration proceedings eventually come to an end. The relevant extracts of *Goqii Technologies (P) Ltd.* reads as under:—

“20. As observed in *Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 INSC 532]*, *frivolity in litigation too is an aspect which the referral court should not decide at the stage of Section 11 as the arbitrator is equally, if not more, competent to adjudicate the same.*

21. *Before we conclude, we must clarify that the limited jurisdiction of the referral courts under Section 11 must not be misused by parties in order to force other parties to the arbitration agreement to participate in a time consuming and costly arbitration process. This is possible in instances, including but not limited to, where the claimant canvasses the adjudication of non-existent and mala fide claims through arbitration.*

22. *With a view to balance the limited scope of judicial interference of the referral courts with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration. Having said that, it is clarified that the aforesaid is not to be construed as a determination of the merits of the matter before us, which*



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the Arbitral Tribunal will rightfully be equipped to determine.”

13. In view of the aforesaid, the scope at the stage of Section 11 proceedings is akin to the eye of the needle test and is limited to the extent of finding a *prima facie* existence of the arbitration agreement and nothing beyond it. The jurisdictional contours of the referral Court, as meticulously delineated under the 1996 Act and further crystallised through a consistent line of authoritative pronouncements by the Supreme Court, are unequivocally confined to a *prima facie* examination of the existence of an arbitration agreement. These boundaries are not merely procedural safeguards but fundamental to upholding the autonomy of the arbitral process. Any transgression beyond this limited judicial threshold would not only contravene the legislative intent enshrined in Section 8 and Section 11 of the 1996 Act but also risk undermining the sanctity and efficiency of arbitration as a preferred mode of dispute resolution. The referral Court must, therefore, exercise restraint and refrain from venturing into the merits of the dispute or adjudicating issues that fall squarely within the jurisdictional domain of the arbitral tribunal. It is thus seen that the scope of enquiry at the referral stage is conservative in nature. A similar view has also been expressed by the Supreme Court in the case of *Ajay Madhusudan Patel v. Jyotrindra S. Patel*⁶.”

9. Learned counsel for the Petitioner and Respondent No. 1 are *ad idem* that the matter may be referred to arbitration. Both parties are also desirous that the Arbitration be carried out under the *aegis* of the **Delhi International Arbitration Centre**⁸.

10. Further, the material on record indicates that the disputed amount is stated to be approximately Rs. 40 crores.

11. In view of the facts that disputes have arisen between the parties, there is an Arbitration clause in the Purchase Order and also keeping rights and contentions open of the parties, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

12. Accordingly, **Hon’ble Mr. Justice V.K. Jain (Retd.)** [REDACTED], who is

⁸ DIAC



empanelled with the DIAC, is appointed as the Sole Arbitrator.

13. Further, in the event that Petitioner seeks to implead the Respondent No. 2 as a party in the arbitration proceedings, it may do so in accordance with the law and to which the Respondent No. 2 is at liberty to articulate any of their grievances, with respect to any such request made to the Arbitrator by the Petitioner.

14. 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.

15. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the Act within a week of entering of reference.

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

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

18. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy between the parties. Let a copy of the said order be sent to the Arbitrator through the electronic mode as well.

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

HARISH VAIDYANATHAN SHANKAR, J
FEBRUARY 10, 2026/tk/va/dj

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