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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION (L) NO.12810 OF 2026

Samraj Gold Exports Private Limited,
A company registered under the provisions of the Companies Act, 1956 and having its address at 907, Jewel World, 9th Floor, 175, Kalbadevi, Bhuleshwar, Mumbai – 400 072
Through the Managing Director
Rakesh Samanta ... **Applicant**

Vs.

The New India Assurance Co. Ltd.,
a wholly owned company by the Government of India, having its registered office at New India Assurance Building, 87, M.G. Road, Fort, Mumbai 400 001 and Deputy General Manager, Mumbai Regional Office – I (MRO – I) , New India Bhawan, 34/38, 2nd Floor, Bank Street, Mumbai 400 023 ... **Respondent**

Mr. Gauraj Shah with Mr. Harjot Singh i/by Mr. Atique Ur Rehman for the applicant.

Mr. Anup Kumar Mathur with Mr. Dharmendra D. Jadhav i/by Shrivatsa Legal LLP for the respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 12, 2026.

PRONOUNCED ON : AUGUST 14, 2026

JUDGMENT:

1. By the present Application filed under Section 11 of the Arbitration and Conciliation Act, 1996, the Applicant seeks appointment of a Sole Arbitrator for deciding the disputes arising between the parties in relation to the Jewellers Block Insurance Policy issued by The New India Assurance Company Ltd.

2. The facts and circumstances which, according to the Applicant, have led to filing of the present Arbitration Application are as follows. The Applicant is engaged in the business of manufacturing and exporting gold jewellery. The Applicant had obtained a Jewellers Block Insurance Policy dated 14 January 2019, which covered various risks, including loss arising from fidelity or dishonest acts of persons to whom the jewellery or gold was entrusted. According to the Applicant, the policy contained an arbitration clause, being Condition No. 19. However, the complete terms and conditions of the policy were not supplied to the Applicant when the policy was issued. The said terms, according to the Applicant, came to be disclosed for the first time during the consumer proceedings.

3. The Applicant was insured under a Jewellers Block Policy for the period from 14 January 2019 to 13 January 2020, issued by New India Assurance Company Ltd. According to the Applicant, the policy provided fidelity or goldsmith coverage of Rs.7 crore and contemplated valuation on the basis of market rate together with increase in value. It is, therefore, the case of the Applicant that the loss suffered by him falls within the risk arising from entrustment and custody which was covered under the policy. The Applicant states that the Jewellers Block Insurance Policy as well as the Fidelity Guarantee Insurance Policy were received by him through email. It is the case of the Applicant that the Respondent, with an intention to defeat his claim, manipulated the original insurance policy. According to the Applicant, the Respondent and its officials prepared or relied upon another version of the policy showing it as dated 3 May 2019, without the Applicant's consent. The Applicant alleges that a favourable report was thereafter obtained from the Surveyor on the basis of such policy. It is alleged that, after expiry of the policy period on 13 January 2020, the policy was again altered or restored by showing it as dated 31 January 2020, once again without the consent or knowledge of the Applicant.

4. The Respondent, by its letter dated 28 February 2020, informed the Applicant that his insurance claim had been repudiated. The Applicant, however, points out that the repudiation letter refers to a different policy bearing No. 13130046180100000145. According to the Applicant, the claim was thus repudiated by referring to a policy which was different from the policy under which the Applicant had made his claim.

5. The Applicant thereafter filed Consumer Complaint No. CC/112/2021 before the District Consumer Commission, South Mumbai. According to the Applicant, the complete terms and conditions of the insurance policy, including the arbitration clause, were supplied for the first time on 13 July 2021 during the pendency of the said consumer proceedings. The Applicant relies upon the order dated 19 November 2025 passed by the District Consumer Commission, Mumbai, and submits that the Commission recorded findings regarding manipulation of the policy, unfair trade practice, breach of regulatory requirements and wrongful repudiation of the claim by the Respondent. The Applicant submits that the District Consumer Commission held that the questions concerning quantification of the actual loss, consequential damages and the financial impact arising from the alleged acts of the Respondent could not be decided in those proceedings. The Applicant states that liberty was, therefore, granted to pursue the remedy of arbitration under the insurance policy in respect of such disputes.

6. The Applicant relies upon a certificate dated 8 October 2025 issued by a Chartered Accountant. According to the Applicant, the certificate records matters relating to procurement of gold and other material, export commitments, valuation of bullion, statutory liabilities and the consequences resulting in the account being classified as a Non-Performing Asset. The Applicant contends that the financial loss and loss of profits are required to be calculated by applying the principles commonly referred to as the Hudson, Emden and Eichleay principles.

7. The Applicant states that he invoked the arbitration agreement by issuing a notice dated 20 February 2026. By communication dated 18 March 2026, the Respondent refused to concur in the appointment of an Arbitrator on the ground that an appeal filed by the Respondent before the State Consumer Commission was pending. According to the Applicant, mere pendency of such appeal does not bring the arbitration agreement to an end and cannot prevent the Applicant from invoking the agreed mechanism for resolution of disputes. It is in these circumstances that the Applicant has approached this Court by filing the present Application, which, according to the Applicant, is filed within the prescribed period of limitation.

8. Mr. Gauraj Shah, learned Advocate appearing for the Applicant, submitted that the disputes which the Applicant now seeks to refer to arbitration are limited to the question of quantification and calculation of the amounts payable to the Applicant. According to him, these claims do not seek to disturb or challenge the Award passed by the District Consumer Commission. He submitted that the claims include loss of contribution towards overheads and profit for the alleged disruption of business for 81 months, loss of profit on account of working capital rotation, which according to the Applicant is separate from the claim based on the Hudson formula, loss relating to reinstatement or replacement value of bullion, interest and financial burden arising from the account becoming NPA, statutory and GST liabilities, as well as other consequential reliefs. He submitted that, for this purpose, the Applicant has issued a notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996.

9. Mr. Shah submitted that, by communication dated 18 March 2026, the Respondent refused to concur in the appointment of an Arbitrator. He invited my attention to Clause 8 of the operative part of the order passed by the District Consumer Forum. He submitted that the Forum had observed that, in view of Condition

No. 19 of the Policy, which provides arbitration as a mode for resolution of disputes, liberty was granted to both parties to initiate appropriate arbitration proceedings, if they so desired, in respect of any remaining or future dispute arising out of the Policy. According to him, in view of this specific liberty, the Applicant is entitled to invoke the arbitration clause for adjudication of the disputes which were not decided by the Consumer Forum.

10. Inviting my attention to the reply filed by the Respondent before the Consumer Commission, Mr. Shah submitted that the defence of the Respondent, as recorded in the judgment of the Consumer Commission, referred to Condition No. 19 of the Policy. According to him, the Respondent had taken a stand before the Consumer Forum that disputes relating to the quantum of loss were required to be settled through arbitration under Condition No. 19. He submitted that the Respondent has reiterated the same stand before the Appellate Forum. According to him, having taken such a stand in the consumer proceedings, the Respondent cannot now oppose the appointment of an Arbitrator when the Applicant seeks to refer the remaining disputes concerning quantification and quantum of loss to arbitration.

11. Mr. Shah submitted that the Consumer Forum, in its judgment, had held that the claims relating to loss of profits, export incentives, GST liabilities and financial interest burden involved detailed accounting and assessment which were beyond the jurisdiction of the Consumer Forum. The Forum, therefore, did not grant those reliefs in the consumer proceedings. He submitted that the Forum had also observed that the right of the complainant to pursue claims for damages, compensation or other appropriate remedies before the competent forum would remain open and would not be affected by its judgment. According to him, the arbitration clause provides that the seat and venue of arbitration shall be at Mumbai. He, therefore, submitted that this Court has jurisdiction and prayed for appointment of a Sole Arbitrator.

12. In support of his submissions, Mr. Shah relied upon the judgment of the Delhi High Court in *Pragati Power Corporation Limited vs. Oriental Insurance Company Ltd.,* 2025 SCC OnLine Del 6298, and the judgment of the Supreme Court in *Ajay Madhusudan Patel & Ors. vs. Jyotrindra S. Patel & Ors.,* (2025) 2 SCC 147.

13. Per contra, Mr. Mathur, learned Advocate appearing for the Respondent, submitted that the second part of Condition No. 19 provides that no difference or dispute shall be referred to arbitration where the Company has disputed or not accepted its liability. He submitted that, therefore, the question whether a valid and enforceable arbitration agreement exists in the facts of the present case falls for consideration by this Court under Section 11 read with Section 7 of the Arbitration and Conciliation Act. According to him, this is not a question which can be left for decision by the Arbitral Tribunal.

14. Mr. Mathur submitted that Condition No. 19 is an arbitration clause only in relation to disputes concerning the quantum of loss. According to him, the clause does not apply where the liability has been repudiated by the insurance company. He submitted that the claims which the Applicant now seeks to refer to arbitration are, to a substantial extent, outside the scope of the risks and claims covered under the relevant conditions of the Policy. He submitted that the claim under the Policy was repudiated by the Respondent by its communication dated 28 February 2020.

15. He submitted that Condition No. 19 provides that, where the Company disclaims liability and the claim is not made the subject matter of a suit before a Court of law within 12 calendar months from the date of such disclaimer, the claim shall be treated as abandoned and shall thereafter not be recoverable. According to him, the arbitration notice under Section 21 was issued by the Applicant only on 20 February 2026, almost six years after the repudiation dated 28 February 2020. He, therefore, submitted that the claim sought to be referred to arbitration is also barred by limitation and by the terms of the Policy.

16. Mr. Mathur submitted that the contention of the Applicant that limitation should be counted from the date of the order passed by the Consumer Forum, namely 19 November 2025, is misconceived. According to him, the order of the Consumer Forum does not give rise to any fresh cause of action for the purpose of invoking arbitration. He submitted that the Applicant cannot claim exclusion of time by relying upon Section 14 of the Limitation Act in the facts of the present case.

17. He also submitted that the order dated 19 November 2025 passed by the District Consumer Forum is presently under challenge before the State Consumer Commission and has not yet attained finality. According to him, when the very order on which the Applicant relies is under consideration before the Appellate Forum, the arbitration proceedings cannot be commenced on the basis that the findings and observations in that order have become final.

18. Mr. Mathur submitted that the Applicant was required to elect the remedy which he wished to pursue. According to him, the Applicant consciously chose to approach the Consumer Forum and pursued the consumer complaint until the judgment was delivered. Having elected to seek relief before the Consumer Forum in respect of the same dispute and cause of action, the Applicant cannot now, according to the Respondent, invoke the arbitration clause for pursuing the same cause of action before another forum.

19. In support of his submissions, Mr. Mathur relied upon the judgments of the *Supreme Court in United India Insurance Co. Ltd. vs. Hyundai Engineering & Construction Co. Ltd.,* (2018) 17 SCC 607*, Vulcan Insurance Co. Ltd. vs. Maharaj Singh,* (1976) 1 SCC 943, *and National Insurance Co. Ltd. vs. Mastan & Another,* (2006) 2 SCC 641.

<u>REASONS AND ANALYSIS:</u>

20. I have considered the rival submissions and the judgments relied upon by both sides. The main objection raised by the Respondent is based upon Clause 12 of the IAR Policy. According to the Respondent, Clause 12 puts restriction on the nature of dispute which can be referred for arbitration. It is submitted that arbitration can take place only when there is a dispute regarding the quantum payable under the policy and when the liability is otherwise admitted. According to the Respondent, in the present matter, the claims of the Petitioner have been repudiated. The Respondent has also raised a contention regarding accord and satisfaction. Therefore, according to the Respondent, the present dispute does not fall within the arbitration agreement.

21. The Petitioner submits that after the decisions in I*nterplay, In re and SBI General Insurance Co. Ltd. v. Krish Spinning*, the scope of enquiry by this Court under Section 11 has become very limited. According to the Petitioner, once the existence of an arbitration agreement is found, the questions regarding repudiation, arbitrability, scope of arbitration clause and accord and satisfaction are required to be decided by the Arbitral Tribunal. According to the Petitioner, this Court is not required to finally decide those questions at the stage of appointment of an Arbitrator.

22. The arbitration clause in the present matter is contained in Clause 12 of the IAR Policy. The material portion of the clause reads thus:

> "12. If any difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of an arbitrator…"

23. The clause thereafter expressly provides:

> "It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this policy."

24. It provides that obtaining of an arbitral award shall be a condition precedent to any right of action or suit under the policy.

25. The words "liability being otherwise admitted" are part of the agreement entered into between the parties. Those words cannot be treated as having no purpose. Similarly, the stipulation that "no difference or dispute shall be referable to arbitration" if the Company has disputed or not accepted liability is couched in clear negative language. Therefore, if Clause 12 is considered only on its plain wording, along with the earlier judgments of the Supreme Court dealing with similar clauses, the submission of the Respondent that the arbitration agreement has restricted scope cannot be said to be without substance.

26. In *United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd.*, the Supreme Court, in paragraph 12, considered an arbitration clause similar to Clause 12 in the present matter and held:

> "From the line of authorities, it is clear that the arbitration clause has to be interpreted strictly. The subject Clause 7 … is a conditional expression of intent. Such an arbitration clause will get activated or kindled only if the dispute between the parties is limited to the quantum to be paid under the policy. The liability should be unequivocally admitted by the insurer. That is the precondition and sine qua non for triggering the arbitration clause."

27. The Supreme Court referred to the negative covenant contained in the clause and held:

> "It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore

> provided, if the Company has disputed or not accepted liability under or in respect of this Policy."

28. The conclusion recorded by the Supreme Court was clear:

> "Thus understood, there can be no arbitration in cases where the insurance company disputes or does not accept the liability under or in respect of the policy."

29. Therefore, the Respondent is right to the extent that *Hyundai Engineering* gives importance to the distinction between a dispute regarding quantum and a dispute regarding liability. If the insurer accepts that it is liable under the policy but disputes only the amount payable, the arbitration clause may operate. However, if the insurer repudiates the claim and disputes its liability under the policy, the earlier line of authorities treated such dispute as being outside the scope of a restricted arbitration clause.

30. This position was also considered by the Supreme Court in *Hyundai Engineering* to *Oriental Insurance Co. Ltd. v. Narbheram Power and Steel (P) Ltd*. In paragraph 10, after referring to the principle that an arbitration clause has to be strictly construed, the Supreme Court quoted paragraph 23 of *Narbheram* as follows:

> "It does not need special emphasis that an arbitration clause is required to be strictly construed. Any expression in the clause must unequivocally express the intent of arbitration. It can also lay the postulate in which situations the arbitration clause cannot be given effect to. If a clause stipulates that under certain circumstances there can be no arbitration, and they are demonstrably clear then the controversy pertaining to the appointment of arbitrator has to be put to rest."

31. The Court thereafter noted that Clause 13 considered in *Narbheram* "categorically lays the postulate that if the insurer has disputed or not accepted the liability, no difference or dispute shall be referred to arbitration."

32. Thus, according to this earlier position, where the policy provides that a particular category of dispute shall not go for arbitration, such exclusion cannot be ignored. The words used by the parties in the arbitration clause have to be given their due meaning.

33. The same approach was adopted in *Vulcan Insurance Co. Ltd. v. Maharaj Singh*. In paragraph 11, the Supreme Court distinguished between repudiation of liability and a dispute only regarding the amount of loss. The Court observed:

> "The appellant company in its letters dated 5-7-1963 and 29-7-1963 repudiated the claim altogether."

34. The Court thereafter held:

> "If the rejection of the claim made by the insured be on the ground that he had suffered no loss as a result of the fire or the amount of loss was not to the extent claimed by him, then and then only, a difference could have arisen as to the amount of any loss or damage within the meaning of Clause 18."

35. The distinction is clear under the reasoning in *Vulcan Insurance*. If the dispute is regarding the amount of loss, the arbitration clause may be attracted. But where the insurer says that it is not liable to pay anything at all, the earlier view was that such dispute may not be covered by a clause restricted only to the quantum of loss.

36. In paragraph 12 of Vulcan Insurance, the principle was explained in the following terms:

> "But as soon as there is a rejection of the claim and not the raising of a dispute as to the amount of any loss or damage, the only remedy open to the claimant is to commence a legal proceeding, namely, a suit, for establishment of the company's liability."

37. The Court clarified:

> "But the arbitration clause, restricted as it is by the use of the words 'if any difference arises as to the amount of any loss or damage', cannot take within its sweep a dispute as to the liability of the company when it refuses to pay any damage at all."

38. Paragraph 18 of *Vulcan Insurance* also states the general principle as follows:

> "As a rule, where the amount of the loss or damage is the only matter which the parties refer to arbitration, then if the insurers repudiate any liability on the policy there is no obligation on the assured to arbitrate as to the amount before commencing an action on the policy."

39. Thus, there is no difficulty in accepting that the submission of the Respondent has support under the earlier authorities directly dealing with insurance arbitration clauses of this nature. Under those decisions, the distinction between complete repudiation of liability and a dispute concerning quantum was treated as material.

40. The judgment in *Vulcan Insurance* also considered the effect of a *Scott v. Avery* clause. In paragraph 14, the Supreme Court observed that where the arbitration clause is not operative in respect of the dispute raised, it would be "wholly unreasonable, almost impossible" to insist that the parties should still obtain an arbitral award before commencing legal proceedings. The Court posed the question:

> "What dispute will be referred to arbitration? The dispute raised is not within the purview of arbitration."

41. In paragraph 22, the Court held:

> "But if on the other hand a dispute cropped up at the very outset which cannot be referred to arbitration as being not covered by the clause, then Scott v. Avery clause is rendered inoperative and cannot be pleaded as a bar to the maintainability of the legal action or suit for determination of the dispute which was outside the arbitration clause."

42. Therefore, under the earlier legal position, the first question was whether the dispute fell within the arbitration clause. If it did not fall within that clause, the requirement of first obtaining an arbitral award could also not operate.

43. Therefore, if this Court was required at this stage to finally interpret Clause 12 and record a conclusive finding whether the Respondent has, in fact and in law, repudiated its liability, the judgments in *Vulcan Insurance, Narbheram* and *Hyundai Engineering* would certainly require consideration. The Respondent cannot be said to have raised an objection without any legal basis. The objection arises from the language of Clause 12 and from the judgments dealing with materially similar insurance clauses.

44. However, this does not finally conclude the controversy before this Court. The important question at the present stage is different. This Court is not presently deciding whether the repudiation by the Respondent is legally valid or invalid. Nor is the question whether, after final interpretation of Clause 12, the claims of the Petitioner fall within or outside the arbitration clause.

45. The question before this Court is whether, while exercising powers under Section 11 of the Arbitration and Conciliation Act, 1996, this Court is required to finally decide all these disputed issues before constituting the Arbitral Tribunal.

46. On this aspect, the subsequent judgment assumes importance. In *Ajay Madhusudan Patel*, while summarising the legal position, the Supreme Court observed in paragraph 76.2 that insertion of Section 11(6-A) confined the examination by the Court to the "existence" of an arbitration agreement. Paragraph 76.3 records that *Duro Felguera* explained the effect of this provision by stating that all that the Court is required to see is whether an arbitration agreement exists, "nothing more, nothing less."

47. Therefore, the approach under Section 11 has undergone change. The Court dealing with appointment of an Arbitrator is not expected to conduct a full trial regarding all disputes raised between the parties.

48. The position was explained in paragraph 76.4 with reference to *Vidya Drolia*. Thereafter, the decision in *Interplay, In re*, as noticed in paragraph 76.5 of *Ajay Madhusudan Patel*, clarified that the scope of examination under Section 11 should be confined to the "existence of the arbitration agreement" under Section 7. The validity which may be examined at that stage is formal validity, such as whether the agreement is in writing. Substantive objections concerning existence or validity which require examination of evidence are required to be left for decision of the Arbitral Tribunal.

49. Paragraph 76.6 of *Ajay Madhusudan Patel* then refers to *Krish Spinning* and records the caution expressed by the Supreme Court that Courts entering into the domain of the Arbitral Tribunal at the Section 11 stage may run the risk of leaving a claimant remediless where the Section 11 application is rejected. The judgment also holds that a detailed enquiry at the appointment stage would be contrary to the object of expeditious disposal of applications under Section 11.

50. This brings the Court to the decision in *Krish Spinning*. The proposition in paragraph 114 reads:

> "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."

51. The Supreme Court considered whether the earlier approach of examining accord and satisfaction or ex facie non-arbitrability could continue after the decision in *Interplay, In re*. The Court found it difficult to hold that such examination by the referral Court could continue.

52. Paragraph 122 of *Krish Spinning* is also relevant. The Supreme Court observed that once an arbitration agreement exists between the parties, the disputes raised by them have to be taken before the Arbitral Tribunal constituted in accordance with the agreed procedure. The Court cautioned that if the referral Court examines accord and satisfaction at that stage, it would amount to:

> "usurpation of the power which the parties had intended to be exercisable by the Arbitral Tribunal alone and not by the national courts."

53. This observation is important. The issue is not whether accord and satisfaction can never defeat a claim. It certainly can, if established on the material. The question at this stage is who should decide that disputed issue.

54. The Respondent has submitted that *Krish Spinning* does not overrule *Hyundai Engineering* or *Narbheram* and that a specific exclusion contained in an arbitration clause must still be given effect. This submission has to be understood in its proper manner. The interpretation placed in *Hyundai Engineering* upon a arbitration clause remains relevant for deciding the question whether a particular dispute is arbitrable.

55. At the same time, the present proceedings cannot be converted into a full adjudication regarding the scope of Clause 12. A distinction has to be maintained between the final issue whether the dispute is arbitrable and the limited enquiry which this Court is required to undertake at the stage of appointment of an Arbitrator. *Hyundai Engineering* and *Narbheram* dealt with the consequence of repudiation under restrictive arbitration clauses.

Krish Spinning, read with *Interplay, In re*, explains what the referral Court is expected to decide at the threshold stage.

56. The decision of the Delhi High Court in *Pragati Power*, relied upon by the Petitioner, has applied this subsequent position of law to disputes arising under insurance policies.

57. In *Inox World Industries Private Limited v. IFFCO Tokio General Insurance Company Limited,* 2025 SCC OnLine Del 2873, the Court considered an objection based upon the same authorities which are now relied upon by the Respondent. After referring to *Krish Spinning*, the Court held in paragraph 11:

> "It is now impermissible for a Section 11 court to dwell on the issues of 'arbitrability' or the scope of the arbitration agreement."

58. In paragraph 12, after referring to *Krish Spinning*, the Court noted:

> "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."

59. *Inox World* considered the argument that repudiation by the insurer prevented appointment of an Arbitrator. In paragraph 18, the Court held:

> "Whether or not arbitration is precluded in the present case or whether the claims sought to be raised by the petitioner are liable to be resolved through arbitration … will hinge on the interpretation of the arbitration agreement. The same shall be done by a duly constituted Arbitral Tribunal."

60. The Court held that all attendant factual questions, including the validity or invalidity of the repudiation and other aspects having a bearing upon arbitrability, would have to be considered by the Arbitral Tribunal.

61. The reasoning in *Inox World* becomes relevant in the present case because Clause 12 contains express negative language. Therefore, the matter cannot be decided by saying that there is an arbitration clause in writing and, therefore, no question arises. The language raises a question of interpretation. However, the question is whether such interpretative exercise, particularly when connected with disputed facts regarding repudiation, is required to be undertaken by this Court or by the Tribunal.

62. In paragraph 19 of *Inox World*, the Court observed:

> "This Court also finds it untenable to accept the contention of the respondent that an arbitration agreement is required to be 'strictly construed' so as to preclude even appointment of an arbitrator."

63. The Court observed that where two interpretations are possible, the interpretation which gives effect to the agreement to arbitrate should be preferred.

64. The Court also relied upon *Chloro Controls India (P) Ltd.* v. *Severn Trent Water Purification Inc* (2013) 1 SCC 641 and *MTNL* v. *Canara Bank*, (2020) 12 SCC 767. The principle arising from those decisions is that a commercial arbitration agreement should be interpreted in a manner which gives effect to the intention of the parties to arbitrate and should not be defeated on technical considerations. This does not mean that an express exclusion contained in an arbitration agreement can be ignored. Such exclusion has to be given its proper legal meaning. However, where its applicability requires interpretation and examination of disputed facts, the Court exercising jurisdiction under Section 11 has to remain conscious about the limited nature of its enquiry.

65. The decision in *Payu Payments (P) Ltd.* v.*New India Assurance Co. Ltd.*, 2024 SCC OnLine Del 6777 also considered the same objection which is raised by the Respondent. In paragraph 31, the Court observed:

> "any question of arbitrability or nonarbitrability of the dispute has to be relegated to the Arbitral Tribunal."

66. It observed that acceptance of the insurer's submission that repudiation made the dispute non-arbitrable would amount to the referral Court rendering a finding on arbitrability.

67. In paragraph 40 of *Payu Payments*, the Court stated:

> "The decision in SBI General Insurance Co. Ltd. case, however, has resulted in a paradigm shift in the scope of examination by a Section 11 court. As of today, a Section 11 court cannot examine the aspect of arbitrability of the dispute."

68. Paragraph 42 again reiterated the central proposition that the scope of enquiry is confined to the "prima facie existence of arbitration agreement and nothing else."

69. *Pragati Power* is important because that case dealt with Clause 12 of an IAR Policy and an objection that the insurer had denied liability and, therefore, the dispute could not be referred to arbitration. The Court held in paragraph 11:

> "Further, this dispute regarding arbitrability in no way alters the existence of the arbitration agreement, and as such, can be better adjudicated upon by the arbitral tribunal as a preliminary issue."

70. The Court concluded that once the existence of the arbitration agreement was found, that was sufficient for appointment of an Arbitrator, while expressly preserving the right of the Respondent to raise its objections before the Tribunal.

71. I find the reasoning in the aforesaid decisions applicable to the present case. There is no dispute that Clause 12 forms part of the IAR Policy entered into between the parties. There is also no dispute, at least regarding the formal existence of the written agreement, that the parties had agreed upon an arbitration procedure.

72. The real dispute concerns the legal effect of the communications issued by the Respondent. It concerns whether those communications amount to a complete repudiation of liability. It also concerns whether such repudiation is sustainable, whether the claims stood discharged by accord and satisfaction and whether, as a result of these circumstances, the dispute falls outside the scope of Clause 12. These questions cannot be answered merely by looking at the existence of Clause 12. They require examination of the communications exchanged between the parties, the nature of the claims, the circumstances in which the claims were raised, the stand taken by the Respondent and the effect of the alleged settlement or satisfaction.

73. If this Court records a final finding that the Respondent has validly repudiated the claim, such finding may decide an issue between the parties. Similarly, a finding that the repudiation is invalid would also require this Court to enter into the merits of the dispute.

74. The submission of the Respondent based upon the doctrine of election also requires consideration. In *Mastan*, paragraph 23, the Supreme Court held:

> "The 'doctrine of election' is a branch of 'rule of estoppel', in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."

75. The Court observed:

> "The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both."

76. In paragraph 24 of *Mastan*, the Supreme Court referred to the principle that a person cannot "approbate and reprobate" and clarified that the operation of the doctrine is confined to reliefs claimed in respect of the same transaction and the persons who are parties thereto.

77. Paragraph 25 refers to the principle that:

> "That he who accepts a benefit under a deed or Will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it."

78. Paragraph 26 holds that the doctrine is founded upon estoppel and that a person may, by his actions, conduct or silence, be precluded from asserting a right which he otherwise possessed.

79. The principle stated in *Mastan* cannot be disputed. If the material establishes that the Petitioner consciously elected an inconsistent remedy, accepted benefits upon terms amounting to a final settlement or represented that no claim survived, the Arbitral Tribunal will have to give full effect to such conduct. The plea of election cannot be brushed aside merely because an Arbitrator is being appointed. However, existence of a plea of election or accord and satisfaction is not the same thing as proof of election or proof of discharge. It would be necessary to ascertain what exactly was offered, what was accepted, whether acceptance was unconditional, whether the settlement was intended to be final and whether the claims now raised are inconsistent with the earlier position. These questions may require examination of documents.

80. *Krish Spinning* is directly applicable. The Supreme Court has held that an issue of accord and satisfaction does not concern the formal existence of the arbitration agreement. The Arbitral Tribunal is competent to examine such objection, including as a preliminary issue. If this Court enters into a detailed examination regarding whether there was accord and satisfaction, it would require appreciation of contested material. Such exercise would go beyond the limited enquiry contemplated at this stage.

81. The Respondent also placed considerable reliance upon paragraph 13 of *Hyundai Engineering*, where the Supreme Court held that the core issue was whether the relevant communication amounted to complete repudiation and denial of liability or whether it amounted to acceptance of liability with the dispute being restricted to quantum.

82. It shows that the nature of the communication issued by the insurer may be material when the final question regarding applicability of a restricted arbitration clause is decided. However, after *Interplay, In re* and *Krish Spinning*, the question is no longer only whether such examination is material. The question is whether the referral Court is required to undertake that examination and give a final finding under Section 11.

83. In my view, the subsequent decisions prevent this Court from undertaking such final adjudication at the present stage. The Arbitral Tribunal can decide whether the communications of the Respondent amount to repudiation in toto, whether the repudiation is valid, whether Clause 12 excludes the present dispute from arbitration and whether any accord and satisfaction or election has resulted in extinguishment of the claims. This does not mean that the objections of the Respondent are rejected on their merits. The objection based upon the wording of Clause 12 remains open. The Respondent will be entitled to contend before the Arbitral Tribunal that the clause is a restricted arbitration clause and that, because liability was disputed, no dispute was referable to arbitration. The Respondent will also be entitled to rely upon *Vulcan Insurance*, *Narbheram* and *Hyundai Engineering* in support of such contention. Similarly, the Petitioner will be entitled to contend that the alleged repudiation was unilateral, unsustainable or did not amount to a complete denial of liability and that the dispute concerns the amount payable under the policy. The Petitioner may contend that interpretation of Clause 12 should be consistent with the law concerning limited judicial intervention. The Arbitral Tribunal will also be competent to examine whether the doctrine of election applies.

84. There is one more reason why the controversy should not be finally decided at this stage. The Supreme Court in *Krish Spinning* cautioned that an incorrect refusal to refer may leave a claimant without an effective forum, since the statutory scheme does not provide an ordinary appeal against every order passed under Section 11 either appointing or refusing to appoint an Arbitrator. The Court observed in paragraph 123 that by entering into the domain of the Arbitral Tribunal at the initial stage, a referral Court may run the risk of leaving the claimant without a forum for adjudication of its claims. This consideration applies with force where the parties dispute the effect of the communications issued by the Respondent and theconsequence of the alleged accord and satisfaction. This Court would be required to make findings which, having regard to the present scope of enquiry under Section 11, are more appropriately made after the parties have placed their complete pleadings and material before the adjudicatory forum chosen under their agreement.

85. On an overall consideration, therefore, I find that there is a written arbitration agreement between the parties in the form of

Clause 12 of the IAR Policy. Its existence is not seriously disputed. The objections raised by the Respondent concern the scope and applicability of that arbitration agreement to the present claims. The objections also involve the effect of alleged repudiation, denial of liability, accord, and satisfaction and the doctrine of election. The earlier judgments in *Vulcan Insurance, Narbheram* and *Hyundai Engineering* show that a restricted insurance arbitration clause may exclude disputes concerning liability where the insurer has repudiated the claim. That proposition remains a contention available to the Respondent. However, in the light of the subsequent judgments in *Interplay, In re* and *Krish Spinning*, as also the principles laid down in *Ajay Madhusudan Patel*, this Court, while exercising jurisdiction under Section 11, is not required to finally decide those disputed questions merely for deciding whether an Arbitrator should be appointed. The decision in *Ajay Madhusudan Patel*, particularly paragraph 76.5, makes the position clear that substantive objections concerning existence and validity which require examination on the basis of evidence must be left to the Arbitral Tribunal. Paragraph 76.6 records the caution against Courts entering into detailed examination at the Section 11 stage. The question whether Clause 12 operates as an exclusion in the particular facts of the present case requires examination of the Respondent's communications, the nature of repudiation and the other disputed material.

86. The appropriate course is to constitute the Arbitral Tribunal and leave all these objections open for its determination. The Tribunal may consider the question of its jurisdiction and arbitrability under Section 16 of the Arbitration and Conciliation Act, 1996, if such an issue is raised before it. The Tribunal shall decide the same independently on the material placed before it and in accordance with law. The observations made in the present order are only for deciding the application under Section 11 and shall not influence the Tribunal while deciding any issue on merits.

87. The petition deserves to succeed to the limited extent of appointment of an Arbitrator.

88. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

(i) In exercise of powers under Section 11 of the Arbitration and Conciliation Act, 1996, Hon'ble Shri Justice Nitin Jamdar, former Chief Justice of the Kerala High Court, 14A, Commerce House, Nagindas Master Road, Fort, Mumbai – 400 001, is appointed as the sole Arbitrator to adjudicate the disputes and differences arising between the parties in connection with the Agreement of Association dated 14.04.2025 and such disputes arising from the connected Letter of Award dated 25.03.2025 as may fall within the scope of the arbitration agreement;

(ii) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

(iii) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

(iv) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

(v) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

(vi) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the

Tribunal in relation to costs;

(vii) All rights and contentions of both parties regarding arbitrability, validity and effect of repudiation, accord and satisfaction, doctrine of election, limitation, quantum and merits of the respective claims are expressly kept open for consideration and decision by the Arbitral Tribunal in accordance with law;

(viii) The learned Sole Arbitrator shall decide the reference independently and on its own merits, without being influenced by any prima facie observations made in the present order;

(ix) The parties shall appear before the learned Sole Arbitrator on such date and at such time and place as may be communicated or fixed by the learned Sole Arbitrator;

(x) The Arbitration Application is accordingly disposed of

(xi) There shall be no order as to costs.

(AMIT BORKAR, J.)