2026:DHC:7019

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

% *Date of Decision: 18.08.2026*

CNR No. DLHC010380552026

\+ **W.P.(C) 11847/2026 & CM APPL. 54825/2026**

KHY ELECTRONICS INDIA PRIVATE LTD .....Petitioner

Through: Counsel (appearance not given).

versus

NEXXBASE MARKETING PRIVATE LTD .....Respondent

Through: Nemo.

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J (*Oral*)

1. The present writ petition has been filed under Article 226/227 of the Constitution of India, challenging the order dated 15.07.2026 [hereafter '**impugned order**'] passed by the learned Sole Arbitrator in the arbitral proceedings arising out of ARB.P. 1964/2025, whereby the application filed by the petitioner under Section 16 of the Arbitration and Conciliation Act, 1996 [hereafter '**A&C Act**'], calling in question the jurisdiction of the learned Arbitral Tribunal, has been rejected.

2. The facts emerging from the petition and the record are that the petitioner is engaged in the marketing and sale of consumer

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electronic products. The parties initially entered into a Manufacturing and Purchase Agreement dated 24.05.2022, which came into effect from 01.06.2022 and was to remain in force for eleven months. Under the said Agreement of 2022, the petitioner was responsible for procuring raw material from vendors approved by the respondent and manufacturing finished goods therefrom, which were to be supplied to the respondent against purchase orders. Clause 14 of the said Agreement contained an arbitration clause. It is stated that this Agreement admittedly expired by efflux of time. In or about March 2023, the arrangement between the parties changed. The responsibility for procuring raw material was thereafter undertaken by the respondent, which supplied Semi Knocked Down ("SKD") kits to the petitioner. The petitioner was to manufacture finished goods from these kits on a job-work basis. On 13.03.2023, the petitioner forwarded to the respondent, by email, a draft Manufacturing Service Agreement [hereafter '**Draft Agreement**']. Clause 12 of the Draft Agreement contained an arbitration clause, which provided for Delhi as the venue of arbitration. The said Clause reads as under:

> "12. Dispute Resolution
>
> 12.1 All disputes, differences or claims arising out of or in connection with this Agreement including, without limitation, any question regarding its existence, validity, construction, performance, termination or alleged violation shall be resolved by binding arbitration. The venue for such arbitration shall be Delhi and all proceedings shall be conducted in the English language. The award shall be final and conclusive on all parties to this Agreement, whether or not such parties have taken part

> in the arbitration, and shall be subject to forced execution in any court of competent jurisdiction."

3. As per petitioner, on 27.06.2023, the respondent forwarded to the petitioner another revised draft Contract Manufacturing Agreement, which contained a dispute resolution clause at Clause 23. This draft provided for Gurugram as the seat of arbitration and also contemplated a pre-arbitration dispute resolution process. The parties continued to correspond in relation to the proposed agreement, including by email dated 18.07.2023. As per petitioner, neither of the two drafts was executed or signed by the parties. During the financial year 2023-24, the respondent supplied SKD kits to the petitioner on several occasions and raised purchase orders for manufacture of the finished goods on a job-work basis. The petitioner received the raw material, manufactured the finished goods and raised invoices.

4. Disputes subsequently arose between the parties. The respondent initially issued a notice dated 18.08.2025 invoking arbitration under Clause 14 of the 2022 Agreement. The said notice was thereafter withdrawn and a fresh notice dated 01.09.2025 was issued, this time invoking Clause 12 of the Draft Agreement. In the meanwhile, the respondent had instituted proceedings under Section 9 of the A&C Act, being O.M.P.(I)(COMM.) 368/2025. Notice was issued in the said proceedings on 09.09.2025. The petitioner did not appear and, by order dated 21.11.2025, this Court proceeded against the petitioner ex parte and disposed of the petition. A further order was passed in the said proceedings on 18.02.2026. The order dated

21.11.2025 was not challenged by the petitioner. The respondent thereafter filed a petition under Section 11(6) of the A&C Act, being ARB.P. 1964/2025, seeking reference of the disputes to arbitration. In the said case, the petitioner entered appearance on 21.11.2025 pursuant to advance service and sought time to file a reply. When the matter was taken up on 09.02.2026, the petitioner appeared through counsel, did not file a reply and raised no objection to the disputes being referred to arbitration.

5. By order dated 09.02.2026, this Court appointed a former Judge of this Court as the learned Sole Arbitrator.

6. The respondent thereafter filed its Statement of Claim dated 10.03.2026 before the learned Sole Arbitrator. Paragraphs 5 and 7 thereof, which are relevant to the controversy in the present petition, read as under:

> "4. Basis mutual discussion and understanding, the Parties initially commenced their business relationship by entering into a Manufacturing and Purchase Agreement dated 24th May 2022 ("Said Agreement"). Pursuant to the Agreement, the Claimant entrusted to the Respondent to procure raw material from their preapproved vendors to manufacture finished goods for selling the same to the Claimant in accordance with the defined terms envisaged in the purchase orders as and when raised by the Claimant. The Said Agreement was valid for a period of eleven (11) months as provided under Clause 18 of the Agreement, effective from 01st June 2022. Copy of the Manufacturing and Purchase Agreement dated 24th May 2022 is filed herewith as Document 4.
>
> 5. Subsequently in March 2023, the parties mutually revised the arrangement outlined in the Said Agreement, and accordingly the Claimant became responsible to directly procure the raw material and deliver the same to the

Respondent to enable the Respondent to manufacture finished goods on job work basis. The said mutual revision of the arrangement was further captured in the form of Manufacturing and Purchase Agreement (for job work basis) ["Said Agreement 2"] which was shared by the Respondent vide e-mail dated 13th March 2023 between the parties. It is pertinent to mention that as some of the clauses were under discussion, however primarily the process of new arrangement including dispute resolution clause was broadly agreed as captured under Said Agreement 2 and the Claimant continued to supply the products to be manufactured by the Respondent. Needless to mention that under Said Agreement 2, the Parties agreed for Arbitration for adjudication of their disputes. Printout of email exchanges between the Parties related to the Said Agreement 2 along with its draft as shared between the parties are filed herewith as Document 5 (Colly).

6. It is pertinent to mention that the job work charges levied by the Respondent for converting the raw material into finished product also included the cost of process loss incurred during the assembly of the kits, in accordance with the agreed terms. Hence, the Claimant always paid the process loss charges (as per Clause 10 of the Said Agreement 2) as part of the job work charges agreed with the Respondent. The Claimant also on various occasions helped the Respondent to procure such raw material as and when required by Respondent for completion of the finished goods.

7. During the financial year 2023-2024 and as per the arrangement agreed under Said Agreement 2, the Claimant procured raw material, in the form of SKD (Semi Knocked Down) Kits, on multiple occasions and delivered the same to the Respondent and the same was duly accepted and acknowledged by the Respondent. It is apposite to mention here that the raw material procured by the Claimant and delivered to the Respondent was product specific. Simultaneous to every such delivery, the Claimant raised purchase order on the Respondent, specifying the product to be manufactured on a job work basis."

7. The petitioner thereafter filed an application dated 10.04.2026 under Section 16 of the A&C Act, questioning the jurisdiction of the learned Arbitral Tribunal. The said application was rejected by the

learned Sole Arbitrator *vide* the impugned order dated 15.07.2026. The reliefs sought by the petitioner in the said application, as recorded in the impugned order, were as follows:

> "5. The Respondent has further pleaded that the present proceedings, having been commenced on the basis of an arbitration clause contained in a mere draft proposal that never materialized into a concluded contract, are without jurisdiction, null, and void *ab initio*. In light of the above, the Respondent has prayed for the following reliefs in its application:
>
> > "a) Rule that this Hon'ble Arbitral Tribunal lacks jurisdiction to entertain and adjudicate the claims and disputes raised by the Claimant in the present proceedings;
> >
> > b) Hold and declare that no valid, subsisting, or binding arbitration agreement exists between the Claimant and the Respondent under the draft Manufacturing Service Agreement;
> >
> > c) Terminate the present arbitral proceedings for want of jurisdiction;
> >
> > d) Award the costs of this application and the proceedings to the Respondent; and
> >
> > e) Pass such other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice."

8. At the outset, this Court has put a query to the learned counsel appearing for the petitioner as to the maintainability of the writ petition and the scope of interference by this Court in arbitral proceedings.

9. The learned counsel appearing for the petitioner argues that the supervisory jurisdiction of this Court under Article 227 of the Constitution is a constitutional power and cannot be ousted by Section 5 of the A&C Act. He submits that an Arbitral Tribunal is

amenable to the jurisdiction of this Court under Article 227. He further submits that although an order rejecting a plea under Section 16 is ordinarily to be challenged under Section 34 after the final award, interference under Article 226/227 remains permissible in exceptional cases where the order suffers from patent lack of jurisdiction or manifest perversity. On merits, the learned counsel appearing for the petitioner contends that the Draft Agreement dated 13.03.2023 was only circulated for review and was never accepted or executed by the parties. He submits that this is evident from the respondent's subsequent draft dated 27.06.2023, which changed the seat of arbitration from Delhi to Gurugram and introduced a pre-arbitration dispute resolution mechanism. The two drafts, according to him, were therefore only a proposal and counter-proposal, with no concluded arbitration agreement between the parties. He further submits that the respondent itself has not pleaded that the Draft Agreement became binding through subsequent conduct. On the contrary, its Statement of Claim states that "some of the clauses were under discussion" and refers only to a broad agreement regarding the commercial arrangement. The learned Arbitral Tribunal has, therefore, travelled beyond the pleadings in holding that a concluded agreement came into existence. He submits that whether an unsigned draft became a concluded contract by subsequent conduct is a disputed question of fact and law which could not have been conclusively decided at the threshold, particularly when the petitioner had not yet filed its Statement of Defence and no evidence had been

led. The impugned order, according to him, thus proceeds on an uncertain contractual foundation and is liable to be set aside.

10. This Court has **heard** the counsel appearing for the petitioner as well as the respondent, and has perused the material available on record.

11. The question that falls for determination is whether the present writ petition under Articles 226/227 of the Constitution of India is maintainable against the impugned order passed by the learned Arbitral Tribunal rejecting the petitioner's application under Section 16 of the A&C Act?

12. At the outset, it shall be apposite to take note of Section 5 of the A&C Act, which gives effect to the legislative policy of minimal judicial intervention in arbitral proceedings. The same is set out below:

> "5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

13. Further, Section 16 of the A&C Act embodies the principle of *kompetenz-kompetenz* and empowers the Arbitral Tribunal to rule on its own jurisdiction, including objections relating to the existence or validity of the arbitration agreement. Sub-sections (5) and (6) of Section 16 provide that where the Tribunal rejects such a plea, it shall continue with the proceedings and make the arbitral award, against which the aggrieved party may take recourse to Section 34. Section

37(2)(a) further provides a right of appeal against an order by which the Arbitral Tribunal accepts a plea under Section 16(2) or 16(3). However, no corresponding appeal is provided against an order rejecting such a plea. The statutory scheme is, therefore, clear – where the jurisdictional objection succeeds, an immediate appeal lies; where it is rejected, the Tribunal is to proceed with the arbitration and the objection can ordinarily be raised in proceedings under Section 34 against the final award.

14. The question, therefore, is whether the absence of an interlocutory remedy under the A&C Act permits interference by this Court under Articles 226 and 227. The Constitution Bench of the Supreme Court in ***SBP & Co. v. Patel Engineering Ltd.****: (2005) 8 SCC 618*, has held that orders of an Arbitral Tribunal cannot routinely be interfered with under Articles 226 and 227 and that a party must ordinarily await the final award and avail the remedy under Section 34. The relevant observations are as under:

> "44. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in- between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice

> may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible."

15. At the same time, though the jurisdiction of the High Court under Article 226 or 227 cannot be completely excluded by Section 5 of the A&C Act, the Hon'ble Supreme Court has repeatedly emphasised that this jurisdiction is to be exercised with great restraint. In ***Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd.:*** *(2020) 15 SCC 706*, interference was confined to cases of patent lack of inherent jurisdiction. In ***Punjab State Power Corporation Ltd. v. EMTA Coal Ltd.:*** *(2020) 17 SCC 93*, the Supreme Court further observed that the perversity must be such as to "stare one in the face". In ***Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd.:*** *(2022) 1 SCC 75*, the Hon'ble Supreme Court reiterated that although the constitutional power of judicial review cannot be curtailed by legislation, its exercise in arbitral matters must remain limited.

16. In ***Tarini Prasad Mohanty v. Sunflag Iron & Steel Company Limited:*** *2026 INSC 566*, the Hon'ble Supreme Court has held as under:

> "**23**. Yet another aspect that is required to be referred to is that the learned Single Judge while referring to the scope of interference under Articles 226 and 227 of the Constitution was

cognizant of the fact that such power needs to be exercised in exceptional rarity wherein the illegality or perversity in the order of the learned Arbitrator stares one in the face. These observations can be found in paragraph 61 of the judgment of the learned Single Judge. **Despite noticing the contours and the scope of jurisdiction under Articles 226 and 227 of the Constitution, the learned Single Judge proceeded to go into the intention of the parties and thereafter determine the true nature of the agreements between them.** It may be noted that the Constitution Bench in *Re: Interplay (supra)* has held in clear terms that any objection in relation to stamping of an agreement falls within the ambit of the Arbitral Tribunal. **It would, thus, be clear that the learned Arbitrator was duly empowered to decide the objection raised by the mine owner as regards insufficient stamping of the agreement. The jurisdiction to decide cannot mean to decide in a particular manner. While exercising such power, one may err on merits. Such error may not be one beyond jurisdiction. The learned Arbitrator was, thus, within his jurisdiction in not upholding the objection raised by the mine owner.** It therefore cannot be said that there was any inherent lack of jurisdiction with the learned Arbitrator. Once it is found that the learned Arbitrator had the jurisdiction to decide the objection in relation to stamping of the agreements, in our view, it was impermissible for the learned Single Judge to undertake the exercise of entertaining a challenge to the said adjudication by proceeding to interpret the agreements. Assuming that the learned Arbitrator erred in his conclusion that the agreement between the parties was 'an agreement to sell', that would not make the case 'exceptional' for being set aside in exercise of writ jurisdiction. Even on this count, the approach of the learned Single Judge is found to be incorrect.

24. In our view, there is another material aspect that requires mention. **It was not open for the learned Single Judge in exercise of writ jurisdiction to enter into the merits of the dispute while adjudicating the challenge to an order passed under Section 16 of the A and C Act. It has to be noted that learned Arbitrator is still seized of the arbitration proceedings and the parties are yet to lead evidence therein. Determining the nature of the agreements at such stage would definitely result in prejudice to the parties.** We may in this regard refer to the decision in *Bhaven Construction through Authorised Signatory Premjibhai K. Shah (supra)*

> wherein a three Judge Bench of this Court observed that it was settled law that interpretation of contracts should not generally be undertaken while exercising writ jurisdiction. Therein, the question arose as to whether the contract between the parties was a contract for manufacture simpliciter or whether it was a contract that was composite in nature and thus a works contract. It was held that the said question required contractual interpretation and was a matter of evidence, especially when both parties had taken contradictory stands in that regard.
>
> We, therefore, find that that the learned Single Judge was not justified in going into the merits of dispute between the parties as regards the nature of the agreements while exercising writ jurisdiction. An exercise requiring interpretation of the various agreements ought not to have been undertaken in exercise of extraordinary jurisdiction."
>
> (emphasis added)

17. The issue has also recently been considered by the Hon'ble Supreme Court in ***Manash Kamal Bezboruah v. M/s Bokahola Tea Company Pvt. Ltd.:*** *2026 INSC 701*, in a case involving a challenge under Article 227 to an order of the Arbitral Tribunal rejecting an objection to its jurisdiction under Section 16 of the A&C Act. The Supreme Court reiterated that the A&C Act is a self-contained code and that, where a plea under Section 16 is rejected, the remedy ordinarily lies under Section 34 after the conclusion of the arbitral proceedings. The Supreme Court further held that before entertaining a petition under Article 227, the High Court ought to first satisfy itself, on a *prima facie* basis, that the order of the Arbitral Tribunal suffers from a patent jurisdictional defect. In the absence of such a finding, interference at the interlocutory stage would defeat the object of expeditious arbitration.

18. Coming to the merits of the petitioner's challenge, the petitioner's case is essentially that there was no concluded arbitration agreement between the parties, since the Draft Agreement dated 13.03.2023 was never finalised or executed. It is contended that the parties only acted upon a broad commercial understanding and not upon the Draft Agreement itself. The petitioner further submits that the learned Sole Arbitrator has proceeded on a case which was not pleaded by the respondent in its Statement of Claim.

19. At the outset, it is pertinent to note that the petitioner had not raised an objection to the appointment of the learned Sole Arbitrator when the matter was considered by this Court on 09.02.2026. The said order records that the petitioner, despite appearing through counsel, did not file a reply and raised no objection to the disputes being referred to arbitration.

20. Be that as it may, this Court has considered the impugned order in the above-noted context. The order is a detailed order running into twenty-five pages. The learned Sole Arbitrator has noticed the rival submissions, the relevant pleadings and the material placed before him and has considered the provisions of Section 7 of the A&C Act and Sections 8 and 9 of the Indian Contract Act, 1872. The decisions relied upon by both sides have also been considered. The learned Sole Arbitrator has thereafter returned findings on the question whether a binding arbitration agreement came into existence through the conduct of the parties. Thus, this is not a case where the learned Sole Arbitrator has assumed jurisdiction without examining

the objection raised by the petitioner. The learned Sole Arbitrator has, in substance, held that an arbitration agreement need not necessarily be signed and that the intention of the parties can be gathered from the terms of the proposed agreement, their correspondence and their subsequent conduct. On the facts of the present case, he has relied upon the fact that the respondent supplied SKD kits to the petitioner, the petitioner accepted the same, manufactured finished goods and raised invoices, and that the parties continued to act upon the arrangement thereafter. He has accordingly taken the view that the parties had acted upon the Draft Agreement and that a binding arrangement, including the arbitration clause, came into existence by their conduct. The learned Sole Arbitrator has also considered the subsequent draft dated 27.06.2023 and has held that it did not displace the agreement which, according to him, had already come into existence by conduct.

21. The question before this Court, however, is not whether the view taken by the learned Sole Arbitrator is ultimately correct. The Court is concerned only with whether the impugned order suffers from such patent lack of jurisdiction or perversity as would justify interference under Article 226 or 227. Having considered the impugned order as a whole, this Court finds no such defect. The learned Sole Arbitrator has considered the rival contentions and the material placed before him and has given reasons for the conclusion reached. Whether those reasons are ultimately sustainable, including whether the conduct of the parties was sufficient to constitute

acceptance of the Draft Agreement, is a matter which cannot be examined in the present proceedings. The finding may be open to challenge at the appropriate stage; however, it cannot be said that the alleged error is so apparent or the reasoning so perverse that it "stares one in the face".

22. The present case, therefore, does not fall within the narrow category of cases warranting interference under Article 226 or 227 of the Constitution of India.

23. The writ petition is, accordingly, dismissed. Pending application also stands dismissed.

24. It is, however, made clear that this Court has not expressed any opinion on the merits of the disputes between the parties or on the question whether a valid and binding arbitration agreement exists between them. All such questions are left open to be considered at the appropriate stage and in accordance with law. All pending applications, if any, also stand disposed of.

25. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

AUGUST 18, 2026/VC
T.D./V.S.