2026:DHC:7287

$~J

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

% ***Judgment pronounced on: 31.08.2026***

\# **CNR No.DLHC010727802025**

\+ **ARB.P. 1576/2025**

SHIVALIK HOUSE KEEPING SERVICES .....Petitioner

Through: Ms. Vibha Sharma, Mr. Mukund Thakur, Mr. Gokulesh Gautam, Advocates.

versus

THE OFFICE IN CHARGE GENERAL ADMIN .....Respondent

Through: Ms. Anju Bhushan Gupta (ASC) along with Mr. Sanyam Gupta, Advocate.

CORAM
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter "*A&C Act*") seeks constitution of an Arbitral Tribunal to adjudicate the disputes between the parties.

2. The disputes between the parties have arisen in the context of a contract awarded by the respondent/ Delhi Technological University (DTU) to the petitioner for provision of Sanitation and Housekeeping Services.

3. The dispute sought to be raised is as regards the petitioner's claim for reimbursement of incremental wages stated to have been paid consequent upon revision in the statutory minimum wages during the subsistence of the contract.

4. The respondent opposes the petition principally on three grounds:

(i) It is contended that the disputes sought to be raised are hopelessly barred by limitation;

(ii) It is urged that the agreement between the parties does not contain an arbitration clause inasmuch as the arbitration clause was contained in the Notice Inviting Tender (NIT) which cannot be considered to have been specifically incorporated as part of the contract.

(iii) That the petition has been instituted by a person, not duly authorized on behalf of the petitioner partnership firm.

FACTUAL BACKGROUND

5. In October, 2010, the respondent issued a Notice Inviting Tender (NIT) for outsourcing of Sanitation and Housekeeping Services at DTU for a period of two years. The petitioner, a partnership firm submitted its bid on 19.10.2010.

6. It is noticed that with the NIT is enclosed "Terms and Conditions of Contract". Clause 59 and 60 thereof provides as under:

> *"59. Dispute Resolution:-*
>
> *a. Any dispute and or difference arising out of or relating to this contract will be resolved through joint discussion of the authorities' representatives of the concerned parties. However, if the disputes are not resolved by joint discussions, then the matter will be referred for adjudication to a sole Arbitrator appointed by the Vice Chancellor Delhi Technological University, Delhi.*
>
> *b. The award of the sole Arbitrator shall be final and binding on all the parties. The arbitration proceeding's shall be governed by Indian Arbitration and Conciliation Act 1996 as amended from time to time. The cost of Arbitration shall be borne by the respective*

parties in equal proportions. During the pendency of the arbitration proceeding and currency of contract, neither party shall be entitled to suspend the work/service to which the dispute relates on account of the arbitration and payment to the contractor shall continue to be made in terms of the contract. Arbitration proceedings will be held at Delhi / New Delhi only.

60. JURISDICTION OF COURT:-

The courts at Delhi/New Delhi shall have the exclusive jurisdiction to try all disputes, if any, arising out of this agreement between the parties."

7. By a letter dated 27.01.2011, the respondent conveyed acceptance of the petitioner's bid. The said letter reads as under:

Government of National Capital Territory of Delhi

DELHI TECHNOLOGICAL UNIVERSITY

(Formerly Delhi College of Engineering)

Shahbad Daulatpur: Bawana Road: Delhi - 110 042

No. F.211/13-29/2010-11/ 22455-58 Dated:- 27-1-11

M/s. Shivalik House Keeping Service,
148, South Anarkali, Chander Nagar, Som Bazar,
DELHI - 110 051

SUB: Tender No. F.211/13-29/2010-11 ('e'-tender ID No. 31745) Opened on 19/10/2010 for "Annual Contract for providing Sanitation Services in Delhi Technological University, Delhi" - regarding.

Sir,

Reference your bid dated 19/10/2010 and subsequent letter dated 28/12/2010 in response to the open tender cited above; the undersigned is directed to inform you that the rates offered in the bid for "Annual Contract for providing Sanitation Services - With Material" in the university for a period of two years have been accepted by the competent authority subject to (i). fulfillment of the terms & conditions of the NIT, including statutory obligations, disbursement of wages to the workers, deposit of ESI, PF, etc., (ii). deployment of workers as per your letter dated 28/12/2010 and (iii). putting in place adequate check & balances to ensure quality of work.

2. You are required to convey your acceptance in writing for undertaking the proposed work and execute a contract agreement as per Annexure X of the NIT and submit Performance Security Deposit of Rs. 5,30,170/- (@.10% of the annual contract value) in form of FDR/DD/Bank Guarantee (as per Annexure-IX), issued by any scheduled commercial bank in f/o Registrar, Delhi Technological University, Delhi, valid for a period of 60 days beyond the validity date - on which no interest shall be paid - within 30 days of the issue of this letter; failing which it will b assumed that you are not interested in this contract and the authority will be free to initiate appropriate action for annulment of award and forfeiture of bid security in terms of clause 11.1.5 of the NIT.

3. The Labor License under Contract Labor (R&A) Act from the Labor Commissioner, GNCTD against this contract award will also be required to be submitted within one month of commencement of work and the first payment against this contract will be released on submission of labor license.

4. The formal award of the contract with exact date of deployment shall be communicated only after receipt of stated documents & Performance Security Deposit in the university.

8. The petitioner conveyed its acceptance on 28.01.2011. Thereafter, the respondent addressed a letter dated 02.02.2011 to the petitioner, containing the subject "Award of contract for sanitation services at DTU". The said letter is as under:

Web.: www.dce.edu

DTU
Delhi Technological University

Tel. : 91-11-2787 1018
Fax : 91-11-2787 1023
E-mail : vcdtu@dce.edu

DELHI TECHNOLOGICAL UNIVERSITY
(formerly DELHI COLLEGE OF ENGINEERING)
GOVT. OF NCT OF DELHI
Shahbad Daulatpur, Bawana Road, Delhi

F.211/13-29/2010-11 | 22704-22711

Dated:- 2-2-11

To,

M/S Shivalik House Keeping Service,
148,South Anarkali,Chander Nagar,
Som Bazar,
Delhi.

Sub: Award of contract for sanitation services at DTU

Sir,

With reference to your letter No. SHKS/DTU/2010-11/371 & 377 dated: 28.01.2011 and 31.01.2011 respectively in response to this office letter of even No. Dated: 27.01.11 on the subject cited above, I am directed to intimate that consequent upon acceptance to undertake the sanitation work, depositing the FDR No. 1795401013380/53 dated: 31.01.2011 amounting to Rs. 5,31,000/- and Form V (In quadruplicate) for Registrar, DTU , the Competent Authority is pleased to award the contract for sanitation services in DTU campus to your agency for a period of two years commencing from 07.02.2011 on the terms and conditions stipulated in the tender documents/agreement for sanitation.

You are therefore requested to kindly take charge of the areas, as defined in the tender documents, in consultation with the Officer incharge of DTU from 07.02.2011 at 6.00 a.m. and produce agreement (Two Sets) signed on non-judicial stamp paper of Rs. 100/- and Labour Licence under contract labour (R&R) Act from the office of the Labour Commissioner within 30 days.

It may please be noted that first payment will be released by the Delhi Technological University only after completion of the above documents.

(DR. K SINGH)
Joint Registrar (Admn.)

F.211/13-29/2010-11/ 22704-22711 Dated:- 2-2-11
Copy to:

9. Pursuant to the aforesaid, a formal Contract Agreement dated 06.05.2011 was executed between the parties. The same reads as under:

AGREEMENT

This Agreement is made on the 06th day of May, 2011 between the Board Management, Delhi Technological University, Delhi herein after called " DTU" which expression shall, unless excluded by or repugnant to the context, be deemed to include its successor in office and assigns of the one part AND M/s Shivalik HouseKeeping Services, 148 South Anarkali, Chander Nagar, Som Bazar, Delhi-110051 through Shri Sunil Kaushik, the authorized representative (hereinafter called "Contractor" (which expression shall, unless, excluded by or repugnant to the context, be deemed to include its/their heirs, successors, executors, administrators, representatives and assigns) of the other part. Under which the contractor shall provide unformed and trained personnel and will use its best endeavours to provide Sanitation and Housekeeping Services in Delhi Technological University, Delhi.

NOW THIS AGREEMNT WITNESSETH as follows:-

1. In this Agreement words and expression shall have the same meaning as are respectively assigned to them in the Terms and Conditions of contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and constructed as per of this Agreement, viz:
   a. Letter of acceptance of award of contract;
   b. Terms and Conditions;
   c. Notice Inviting Tender;
   d. Bill of Quantities;
   e. Scope of work;
   f. Addendums, if any
   g. Any other documents forming part of the contract.

For SHIVALIK HOUSEKEEPING SERVICES

Partner

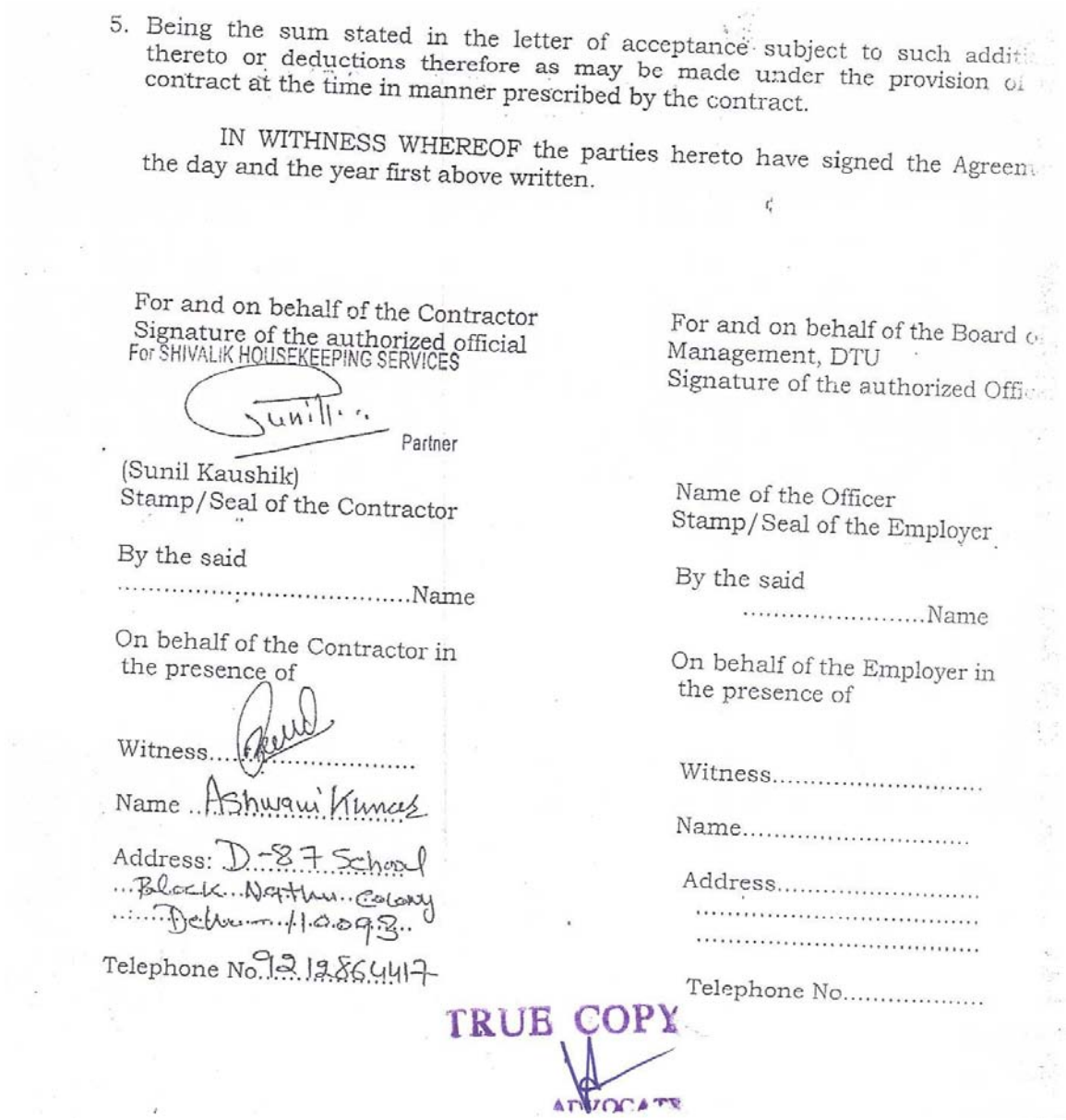
TRUE COPY

ADVOCATE

3. In consideration of the payments to be made by the DTU to the Contract hereinafter mentioned, the Contractor hereby covenants with the employ execute and the Sanitation and Housekeeping Services w.e.f 07.02.2011 period of Two years as per the provision of this agreement and the documents.

4. The DTU hereby covenants to pay the contractor in consideration of the exec and completion of the work/services as per the provision of this Agreement the tender documents, the contract price of **Rs. 4,41,804.81 (Rupees Four Forty One Thousand Eight Hundred Four and Paise Eighty One only) month at initial stage and if the minimum wages is revised by Government of NCT of Delhi/Government of India, the incremental wages applicable, will be provided by the DTU as per terms and conditions of Contract/NIT.**

2026:DHC:7287



5. Being the sum stated in the letter of acceptance subject to such addit thereto or deductions therefore as may be made under the provision of contract at the time in manner prescribed by the contract.

IN WITHNESS WHEREOF the parties hereto have signed the Agreem the day and the year first above written.

For and on behalf of the Contractor
Signature of the authorized official
For SHIVALIK HOUSEKEEPING SERVICES
Sunil...
Partner
(Sunil Kaushik)
Stamp/Seal of the Contractor

By the said
.....Name

On behalf of the Contractor in the presence of

Witness.....
Name Ashwani Kumar
Address: D-87 School Block Nathu Colony Delhi-110093
Telephone No. 9212864417

For and on behalf of the Board o Management, DTU
Signature of the authorized Offi

Name of the Officer
Stamp/Seal of the Employer

By the said
.....Name

On behalf of the Employer in the presence of

Witness.....
Name.....
Address.....
.....
.....
Telephone No.....

TRUE COPY
ADVOCATE

10. As can be seen, Clause-4 of the agreement records the monthly contract price and stipulates that "if the minimum wages is revised by the Government of NCT of Delhi / Government of India, the incremental wages applicable, will be provided by the DTU as per terms and conditions of Contract / NIT".

11. According to the petitioner, the Govt. of NCT of Delhi, by a

notification dated 18.03.2011, revised the applicable minimum wages with effect from 01.04.2011 and from time to time thereafter. It is asserted that the petitioner disbursed wages at revised rates but the respondent continued to release payments computed at pre-revised rates.

12. It is stated that the petitioner raised successive claims for differential/ incremental wages. In this regard, the petitioner makes a reference to a communication dated 13.01.2014, which enclosed the complete details of the basis on which the petitioner sought to claim payments.

13. It is further asserted that reminder letters dated 08.03.2014 and 19.03.2014 were thereafter sent. The respondent is stated to have responded by a letter dated 12.07.2014 asking the petitioner to submit monthly dues and drawn statement for the period w.e.f. 07.02.2011 for necessary action regarding payment of dues.

14. Subsequent protracted correspondence is stated to have ensued between the parties. The petition avers as under:

> 14. That the respondent instead making the payment again issued a letter dated 14.11.2014 asking the petitioner to submit attested photocopy of the acquaintance register maintained by the petitioner duly signed by the representative of the respondent as per the Clause-29 of the agreement. The affect that the agency has paid wages on revised rate from time to time. In reference to the said letter, the petitioner vide letter dated 06.01.2015 had provided the desired details alongwith duly attested photocopy of the

acquaintance register, but despite this efforts, the respondent had not made the payment of incremental wages of the desired period from 07.02.2011 to 22.06.2015 which was duly informed to the respondent by the petitioner vide letter dated 11.8.2015 and reminding you of the payments/arrears of dues of incremental wages towards sanitation services provided at different departments of the college of the respondent of the said period and by the said letter the special attention was also drawn on the letter reference no. DTU/ Gen. Admn./25/2011-2012/386 dated 12.9.2014, wherein had sought the details of submitted dues and drawn statement for the period 07.02.2011 till date and by the said letter the petitioner had again reminded about the remaining balance of the incremental basis which had gone up to the extent of Rs.95,90,101/- (Rupees ninety five lacs ninety thousand one hundred one only) on 11.08.2016 which was also given to along with the statement and was again requested by the petitioner to clear the dues and the petitioner had also along with the said letter provided the complete detail of the payments along with the Annexures-A, B and C in the said letter.

15. That the petitioner was again forced to remind about the said dues for the release of incremental basis by his letter dated 01.01.2016 after he has received another letter dated 26.12.2016 vide Ref. no. DTU/Gen. Admn./81/2014-15/882-86 in which the petitioner had again reminded about the payment and cancelled the previous bill no. DTU/357 dated 01.01.2014 of Rs.51,23,445/- (Rupees fifty one lacs twenty three thousand four hundred forty five only) for period upto 31.12.2013 and informed said bill may be treated cancelled and fresh bill was issued bearing no.354 dated 02.01.2017 of Rs.86,63,745/- (Rupees eighty six lacs sixty three thousand seven hundred forty five only) 07.0.2011 to 22.06.2015 along with complete details as annexures.

16. That the respondent instead of making the payment had again requested and demanded the petitioner to submit the copy of the bank passbook of the employees for the entire period of the claim vide its letter dated 07.04.2017. In response to the said letter the petitioner vide letter dated 14.03.2018 had provided complete details as demanded by and again issued a fresh bill bearing SHKS/DTU/2017-2018/368 dated 01.03.2018 for an amount of Rs.91,02,729/- (Rupees ninety one lacs two thousand and seven hundred twenty nine only) as per the attached Annexure and also provided the details as demanded by and failing to receive the payment from the said letter from respondent.

17. That the petitioner not receiving any payment from the respondent constrained to issue a letter to the Hon'ble Vice Chancellor, Delhi Technical University to look into the matter for the release of payment of the said bill no. 368 on 13.09.2020, but from there also receiving no reply from the office was forced to issue reminder letter dated 13.10.2020 for its issuance of the payment and again a reminder was also sent on 31.03.2021 to the Vice Chancellor and even true email and post.

18. That on 30.09.2021 the petitioner had received an email asking for the documents on the urgent basis. That the petitioner vide letter dated 30.10.2021 submitted all the desired documents along with information to the office of the respondent and had made a request again to the respondent for release of the panic payment of Rs.95,90,101/- (Rupees ninety-five lacs ninety thousand and one hundred one only) towards incremental pages for a period 07.02.2011 to 22.06.2015.

19. That the petitioner after receiving no response from the office of Vice Chancellor, despite sending several reminders post as well as email, wrote another letter to Deputy Registrar, General Admin. On 01.10.2021 for his

due payments of Rs.95,90,101/- (Rupees ninety-five lacs ninety thousand and one hundred one only) along with other details and payment documents.

20. That on 01.11.2021 the petitioner had again received an email asking for submission of documents (i.e. copy of the ESI, PF challan, bill wise due drawn statement and reason for not reviving minimum wages in time as per the Govt. of NCT of Delhi orders) to the Gen. Admin. Branch by 4:00 p.m. 02.11.2021 reasons.

21. That the respondent is filed having several conversations with the petitioner did not made the payment as requested and demanded by the petitioner by letters and emails dated 25.5.2022, 25.06.22, 10.09.2022, 08.10.2022, 04.03.2023, 22.04.2023, 26.04.2023, 01.06.2023, 01.07.2023, 25.11.2023, 23.12.2023, 13.07.2024, 17.07.2024, 02.09.2024, 28.10.2024 , was again receiving the same reply and demand of documents which have been provided to the respondent number of times by the petitioner through reply letter dated 03.10.2022, 17.04.2023, 31.05.2023, 07.10.2024 from the office of the respondent again demanding several documents from the petitioner which were already have been provided to the respondent from time to time and the same was also duly replied by the petitioner and providing the details and copies to the respondent along with the copy to all the superior office of the respondent but did not receiving any payment which was due on a sum of Rs.95,90,101/- (Rupees ninety five lacs ninety thousand one hundred one only) and in the said letter also client had requested for the

release of the same that till date no payment has been released by the respondent in favour of the petitioner .

15. It is submitted that thereafter, on 30.05.2018, the respondent terminated the contract with the petitioner. The communication dated 30.05.2018 reads as under:

DELHI TECHNOLOGICAL UNIVERSITY
(Formerly Delhi College Of Engineering)
Govt. of NCT of Delhi
Shahbad Daulatpur, Bawana Road, Delhi 110 042
Tel : +91-11-2729 4673, e-mail : ga@dtu.ac.in

File No DTU/Gen Admin/059/626/2015-16/5919/1176 Dated: 30 May 2018
01/06/18

M/s Shivalik Housekeeping Services
148, South Anarkali, Chander Nagar
Som Bazar, Delhi – 110051

DISCONTINUATION OF SERVICES FOR PROVIDING HOUSEKEEPING AND SANITATION SERVICES IN DTU

Sir,

1 Please refer our earlier letter No DTU/Gen Admin/059/626/2015-16/27 dated 27 April 2018.

2 The undersigned is directed to inform you that the Competent Authority has been decided for discontinuation of your services in DTU w.e.f. **31 May 2018 (AN)**.

3 This is for your information please.

(Dr Dinesh K. Vishwakarma)
Officer-In-Charge (Gen Admin)

Copy to

1	PA to VC	- for kind information of Hon'ble Vice Chancellor.
2	PA to Pro VC-I	- for kind information of Pro VC-I
3.	PA to Pro VC-II	- for kind information of Pro VC-II
4	Registrar, DTU	
5	DR (F/A)	
6	Head CC	
7	Guard File	

16. It is submitted that the correspondence between the parties continued till 2024. In this regard attention is drawn to letter dated 02.09.2024, sent by the petitioner to the respondent. It is further pointed out that *vide* letter dated 07.10.2024, the respondent wrote to the petitioner as under:

DELHI TECHNOLOGICAL UNIVERSITY
(Formerly Delhi College of Engineering)
Shahabad Daulatpur, Bawana Road, Delhi- 110042.
Tel: +91-11-27294673 E-mail: gaa@dtu.ac.in

F. No. DTU/G.A/080/2015-2016/643(P)/ 394-97/1955 Dated: 07.10.2024

To

M/s Shivalik Housekeeping Services (Regd.)
Head Office : 148, South Anarkali, Chander Nagar,
Som Bazar, Delhi – 110051

M/s Shivalik Housekeeping Services (Regd.)
Corporate Office : A – 327, Pacific Business Park,
Sahibabad, Ghaziabad, Near Passport Office,
Uttar Pradesh : 201010 Ph. 0120-4316054,
0120-4316154, 4316654

Sub: **Payment of M/s Shivalik Housekeeping Services towards incremental wages for the period from 07.02.2011 to 22.06.2015.**

Sir/Madam

This is in continuation of earlier correspondence of even no. dated 31.05.2024 wherein you were asked to provide the copy of duly singed agreement (Along with tender documents) by both the parties in respect of the said contract for the period 07.02.2011 to 22.06.2015 but no such documents could be made available till date.

This is to inform that in absence of copy of duly singed agreement, your request for making payment for the period from 07.02.2011 to 22.06.2015 cannot be considered.

Your Sincerely

(Dr. Anil Kumar)
Dy. Registrar, (Gen. Admin.)

17. In response, a letter dated 28.10.2024 is stated to have been sent by the petitioner, purportedly to provide the necessary particulars as sought by

the respondent.

18. The petitioner issued a notice invoking arbitration on 12.08.2025. It is not in dispute that the respondent neither replied to the said notice nor took any steps to appoint an arbitrator.

19. The present petition was filed on 20.09.2025.

OBJECTIONS ON BEHALF OF THE RESPONDENT

20. Learned counsel for the respondent has made elaborate submissions. It is submitted that the claims are *ex facie* barred by limitation inasmuch as the claims pertain to the period 2011-2015.

21. It is submitted that the contract terminated in 2018 and the notice under Section 21 of the A&C Act was issued only on 12.08.2025 i.e. more than seven years after termination.

22. It is thus submitted that the claims are hopelessly time-barred and in the nature of '*dead-wood*' and as such, this Court should decline to refer the parties to arbitration. In support of the said contentions, the respondent relies upon the following judgments:

i. ***BSNL v. Nortel Networks (India) (P) Ltd.***, (2021) 5 SCC 738;

ii. ***M/S. N.C. Construction vs. Union of India and Ors,*** passed by the Calcutta High Court (AP-COM/144/2025);

iii. ***Sri Swapan Paul vs. M/S. Paul Construction,*** passed by the Calcutta High Court (Arbitration Petition No. AP/28/2025);

iv. ***Sri Ramendra Narayan Bhattacharya v. The State of Tripura and Another,*** passed by the Tripura High Court (ARB.P No. 03 of 2025).

23. Secondly, it is submitted that the agreement dated 06.05.2011

contains no arbitration clause. It is submitted that the arbitration clause is to be found only in the NIT. Reliance is placed on the judgment rendered by the Supreme Court in ***NBCC (India) Ltd. v. Zillion Infraprojects (P) Ltd.,*** (2024) 7 SCC 174, to contend that given the facts and circumstances of the present case, the arbitration clause contained in the NIT has not been incorporated into the contract inasmuch as the latter contains no specific reference thereto.

24. Lastly, it is submitted that the petition has been filed by the person who is not been duly authorized and as such the petition deserves to be dismissed on this ground as well. Reliance in this regard is placed on the judgment passed by the Kerala High Court in ***M/S P.K. Chandrasekharan Nair & Co. vs. Hindustan Petroleum Limited*** (2025:KER:90639).

SUBMISSIONS ON BEHALF OF THE PETITIONER

25. Learned counsel for the petitioner has vehemently opposed the aforesaid submissions. It has been contended that the scope of inquiry under Section 11 of the A&C Act is extremely limited and circumscribed and does not extend to undertaking a detailed adjudication of disputed questions of facts. Reliance is placed on the following judgments:

i. ***Vidya Drolia v. Durga Trading Corpn.,*** (2021) 2 SCC 1;
ii. ***Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman,*** (2019) 8 SCC 714;
iii. ***Duro Felguera, S.A. v. Gangavaram Port Ltd.,*** (2017) 9 SCC 729.

26. As regards the petitioner's contention regarding the claim being

barred by limitation, it is submitted that the petitioner's claim was never unequivocally rejected and the correspondence shows that the dispute is live and subsisting inasmuch as there has been no final rejection of the claim. Refence is made to the protracted correspondence between the parties in this regard. As such, it is submitted that the present case does not fall within the narrow category of being in the nature of '*deadwood*'.

27. It is submitted that the notice under Section 21 of the A&C Act, 1996 was given only on 12.08.2025 and the present petition was filed within the period of limitation.

28. As regards existence of the arbitration agreement, it is submitted that the agreement dated 06.05.2011 was the culmination of the respondent's own tender process and that Clause-2 of agreement deems the NIT and the terms and conditions appended therewith, to form part of the said agreement.

29. It is submitted that the agreement must be construed as part of a composite contractual arrangement. It is further submitted that the respondent itself has acted throughout on the basis of the contractual framework arising out of the tender process and cannot be permitted to selectively rely on the agreement while seeking to disown the terms of the NIT, which is an integral part of the contract.

30. On authorization, it is submitted that the said objection is purely technical inasmuch as the present petition has been instituted by a partner of the petitioner firm who is fully competent and authorized in law to represent and act on behalf of the firm.

31. It is further submitted that even assuming there was any technical defect in the authorization, the same stands cured by virtue of Authorization

Letter dated 17.09.2025, filed *vide* Diary No.229962/2026. The said letter reads as under:

AUTHORIZATION LETTER

We (1) Sh. Sunil Kaushik S/o Late Sh. Radha Krishan Sharma, r/o C-102, Gali No. 03, DDA Colony, New Zafrabad, West Gorakh Park, Shahdara, North East Delhi, Delhi - 110032 (2) Sh. Arvind Kaushik S/o Late Sh. Radha Krishan Sharma r/o H.No. 1/11288-B, Subhash Park Ext., Naveen Shahdara, Delhi-110032 and (3) Mr. Vipul Kaushik S/o Sh. Sunil Kaushik, residence at C-102, Gali No.3 DDA Colony, Near National Victor Public School, West Gorkah Park, Shahdara, North East Delhi, Delhi-110032 partners of M/s Shivalik House Keeping Services, 148 South Anarkali Chander Nagar, Som Bazar, Delhi-110051 are hereby authorized to Sh. Sunil Kaushik to sign the all documents pertaining to the Hon,ble High Court Matter against the Office In-charge (General Admin) Delhi Technological University, (Former Delhi College of Engineering) Govt. of NCT of Delhi Shahbad, Daulatpur, Bawana Road, Delhi-110042 on behalf of the partners of M/s Shivalik House Keeping Services.

Sunil Kaushik
SHIVALIK HOUSEKEEPING SERVICES
Partner

Arvind Kaushik
For SHIVALIK HOUSEKEEPING SERVICES
Partner

Vipul Kaushik
For SHIVALIK HOUSEKEEPING SERVICES

32. As such, it is submitted that the objection relating to authorization is wholly untenable.

ANALYSIS AND FINDINGS

The Scope of inquiry under Section 11 of A&C Act.

33. Before dealing with the individual objections, it is necessary to notice the extant legal position governing jurisdiction and scope of examination by a referral court under Section 11 of the A&C Act.

34. Section 11(6-A) of A&C Act mandates that the Court, while considering an application for appointment of an arbitrator shall confine itself to forming a *prima facie* opinion as regards existence of any arbitration

agreement. The width of the inquiry at the referral stage has been subject matter of successive decisions of the Supreme Court. The legal position has been succinctly set out by a seven-judge bench of the Supreme Court in ***Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re,*** (2024) 6 SCC 1, wherein it has been authoritatively laid down that the referral court is concerned only with the *prima facie* existence of an arbitration agreement, leaving other issues to the arbitral tribunal. The relevant observations therein are as under:

> ***"164.*** *The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. Where Section 8 requires the Referral Court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement. Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the Referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration Act allows an appeal from the order of an Arbitral Tribunal refusing to refer the parties to arbitration under Section 8, but not from Section 11. Thus, the 2015 Amendment Act has legislatively overruled the dictum of Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] where it was held that Section 8 and Section 11 are complementary in nature. Accordingly, the two provisions cannot be read as laying down a similar standard.*
>
> ***165.*** *The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , this Court held that the Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have*

arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] in the context of Section 8 and Section 11 of the Arbitration Act.

166. *The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.*

167. *Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, The Law Lexicon (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234]"*





35. The position was further expounded in ***SBI General Insurance Co. Ltd. v. Krish Spg.***, (2024) 12 SCC 1. The Supreme Court held that the inquiry under Section 11 of the A&C Act is confined to ascertaining the *prima facie* existence of the arbitration agreement and "nothing else". The relevant extracts are as under:

> ***"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 [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] , 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 [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] and adopted in NTPC Ltd. v. SPML Infra Ltd. [NTPC Ltd. v. SPML Infra Ltd., (2023) 9 SCC 385 : (2023) 4 SCC (Civ) 342] 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[Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] ."*

36. In ***SBI General Insurance*** (supra), the Supreme Court clarified its earlier decision in ***Arif Azim Co. Ltd. v. Aptech Ltd.***, (2024) 5 SCC 313 and held that that referral court must not embark upon an intricate inquiry as to whether the substantive claims are time barred. The relevant observations therein are as under:

> ***"131.*** *On the first issue, it was observed by us that the Limitation Act, 1963 is applicable to the applications filed under Section 11(6) of the 1996 Act. Further, we also held that it is the duty of the Referral Court to examine that the application under Section 11(6) of the 1996 Act is not barred by period of limitation as prescribed under Article 137 of*

the Limitation Act, 1963 i.e. 3 years from the date when the right to apply accrues in favour of the applicant. To determine as to when the right to apply would accrue, we had observed in para 57 of the said decision that: (Arif Azim case [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] , SCC p. 340)

> *"57. … the limitation period for filing a petition under Section 11(6) of the 1996 Act can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party, and there has been a failure or refusal on the part of that other party in complying with the requirements mentioned in such notice."*

132. *Insofar as the first issue is concerned, we are of the opinion that the observations made by us in Arif Azim [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] do not require any clarification and should be construed as explained therein.*

133. *On the second issue it was observed by us in para 68 of Arif Azim case [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] that the Referral Courts, while exercising their powers under Section 11 of the 1996 Act, are under a duty to "prima facie examine and reject non-arbitrable or dead claims, so as to protect the other party from being drawn into a time-consuming and costly arbitration process".*

134. *Our findings on both the aforesaid issues have been summarised in para 92 of the said decision thus: (Arif Azim case [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] , SCC p. 357)*

> *"92. Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the 1996 Act, the courts should satisfy themselves on two aspects by employing a two-pronged test — first, whether the petition under Section 11(6) of the 1996 Act is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to arbitration, the court may refuse to appoint an Arbitral Tribunal."*

> ***135.*** *Insofar as our observations on the second issue are concerned, we clarify that the same were made in light of the observations made by this Court in many of its previous decisions, more particularly in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] and NTPC Ltd. v. SPML Infra Ltd. [NTPC Ltd. v. SPML Infra Ltd., (2023) 9 SCC 385 : (2023) 4 SCC (Civ) 342] However, in the case at hand, as is evident from the discussion in the preceding parts of this judgment, we have had the benefit of reconsidering certain aspects of the two decisions referred to above in the light of the pertinent observations made by a seven-Judge Bench of this Court in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] .*
>
> ***136.*** *Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the 1996 Act, the Referral Court should limit its enquiry to examining whether Section 11(6) application has been filed within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in Arif Azim [Arif Azim Co. Ltd.v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] . As a natural corollary, it is further clarified that the Referral Courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time-barred and should leave that question for determination by the arbitrator. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and also to the view taken in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] .”*

37. ***SBI General Insurance*** (supra), nevertheless preserves a distinct inquiry as to limitation governing the Section 11 application itself. For that purpose, what is to be ascertained is whether the petition under Section 11 was filed within the stipulated period, after issuance of a notice under Section 21 of the A&C Act.

38. The jurisdiction of the referral court again came to be considered by the Supreme Court in ***Office for Alternative Architecture v. Ircon Infrastructure & Services Ltd.,*** 2025 SCC OnLine SC 1098, where the Supreme Court took the view that it was impermissible for the referral to segregate or exclude particular claims on appreciation of factual aspects which fall for consideration of the arbitral tribunal.

> ***"6.*** *The short question that falls for our consideration is whether while exercising power under Section 11 of the 1996 Act, the Court has to confine its consideration as to the existence of an arbitration agreement between the parties. If so, whether it would be permissible, while exercising jurisdiction under Section 11, to hold that some of the claims raised are non-arbitrable or fall within excepted category.*
>
> ***7.*** *Sub-section (6A) of Section 11, which was inserted by Act 3 of 2016, with effect from 23.10.2015, makes it clear that while considering an application under sub-section (4) or sub-section (5) or sub-section (6), the Supreme Court or the High Court, as the case may be, shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.*
>
> ***8.*** *Act 33 of 2019 omitted sub-section (6A) but the amending Act has not been notified thus far. In consequence, sub-section (6A) of Section 11 of the 1996 Act remains in the statute book.*
>
> ***9.*** *The statement of objects and reasons of the 2015 amendment with reference to insertion of sub-section (6A) in Section 11 of the 1996 Act, reads thus:*
>
> > *"(iii) an application for appointment of an Arbitrator shall be disposed of by the High Court or the Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of 60 days.*
> >
> > *(iv) to provide that while considering any application for appointment of Arbitrator, the High Court or the Supreme*

Court shall examine the existence of a prima facie arbitration agreement and not other issues."

10. *The significance of the use of the expression "not other issues" in the statement of objects and reasons of the 2015 amendment was noticed by a seven-Judge bench of this Court in In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 18995, and it was observed:*

> *"209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an Arbitrator shall 'examine the existence of prima facie arbitration agreement and not other issues'. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings."*

11. *Relying on the above observations made by this Court in In Re : Interplay (supra), a three-judge bench of this Court in "SBI General Insurance Co. Ltd. v. Krish Spinning6" observed:*

> *"114. ….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 Corporation7 (supra) and adopted in 'NTPC v. SPML Infra Limited8 (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)".*

Emphasis Supplied

12. *As the above decision has been rendered by a three-Judge bench of this Court after considering the seven-Judge bench decision of this Court in In Re : Interplay (supra), we are of the view that the respondent cannot profit from certain observations made by a two-Judge bench of this Court in Emaar (supra). In our view, therefore, the High Court fell in error in bisecting the claim of the appellant into two parts, one arbitrable and the other not arbitrable, when it found arbitration agreement to be there for settlement of disputes between the parties. The correct course for the High Court was to*

leave it open to the party to raise the issue of non-arbitrability of certain claims before the arbitral tribunal, which, if raised, could be considered and decided by it."

39. Thus, the governing principal is that the referral court must satisfy itself that *prima facie* there exists an arbitration agreement and that the petition under Section 11 has been filed within a period of three years reckoned from the failure or refusal of the opposite party to act upon a valid notice invoking arbitration. Beyond that, it is impermissible for a referral court to embark upon an intricate factual inquiry for adjudicating limitation.

40. Even as per the respondent, the reference can be declined only where the conclusion as regards the claim being hopelessly time barred is apparent on the face of the record and requires no evidentiary inquiry at all.

41. It is in the aforesaid framework that this Court proceeds to examine the objections raised by the respondent.

Whether an arbitration agreement exists?

42. The respondent's contention is that the arbitration clause is contained in the NIT alone and that the agreement dated 06.05.2011 only makes a general reference to the tender documents which is not enough to incorporate the arbitration clause into the contract. Reliance is primarily placed on ***NBCC (India) Ltd. v. Zillion Infraprojects (P) Ltd.,*** (2024) 7 SCC 174.

43. ***NBCC (India) Ltd.*** (supra) in turn follows and relies upon a judgment of the Supreme Court in ***M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd.,*** (2009) 7 SCC 696.

44. Significantly, in ***M.R. Engineers*** (supra), the Supreme Court drew a distinction between 'reference' and 'incorporation'. Paras-16 and 17 of ***M.R.***

Engineers (supra) clearly enunciate as under:

> ***"16.*** *There is a difference between reference to another document in a contract and incorporation of another document in a contract, by reference. In the first case, the parties intend to adopt only specific portions or part of the referred document for the purposes of the contract. In the second case, the parties intend to incorporate the referred document in entirety, into the contract. Therefore when there is a reference to a document in a contract, the court has to consider whether the reference to the document is with the intention of incorporating the contents of that document in entirety into the contract, or with the intention of adopting or borrowing specific portions of the said document for application to the contract.*
>
> ***17.*** *We will give a few instances of incorporation and mere reference to explain the position (illustrative and not exhaustive). If a contract refers to a document and provides that the said document shall form part and parcel of the contract, or that all terms and conditions of the said document shall be read or treated as a part of the contract, or that the contract will be governed by the provisions of the said document, or that the terms and conditions of the said document shall be incorporated into the contract, the terms and conditions of the document in entirety will get bodily lifted and incorporated into the contract. When there is such incorporation of the terms and conditions of a document, every term of such document (except to the extent it is inconsistent with any specific provision in the contract) will apply to the contract. If the document so incorporated contains a provision for settlement of disputes by arbitration, the said arbitration clause also will apply to the contract."*

45. ***M.R. Engineers*** (supra) proceeds to lay down the principles governing incorporation by reference. The relevant extract reads as under:

> ***"24.*** *The scope and intent of Section 7(5) of the Act may therefore be summarised thus:*
>
> *(i) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled:*
>
> *(1) the contract should contain a clear reference to the documents containing arbitration clause,*
>
> *(2) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause*

into the contract,

(3) the arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.

(ii) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. The arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.

(iii) Where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

(iv) Where the contract provides that the standard form of terms and conditions of an independent trade or professional institution (as for example the standard terms and conditions of a trade association or architects association) will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. Sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions.

(v) Where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract (as for example the general conditions of contract of the Government where the Government is a party), the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties."

46. It is pertinent to note that the present case pertains to "***incorporation*** *of another document in a contract, by reference*". In such a case, as clarified

in ***M.R. Engineers*** (supra), the parties intend to incorporate the referred document in entirety into the contract. Para-17 of ***M.R. Engineers*** (supra) proceeds to discuss the consequences of such incorporation. It specifically holds that if a contract refers to a document (in this case, the NIT) and provides that the said document shall form part and parcel of the contract, the terms and conditions thereof (the NIT) "*in entirety will get bodily lifted and incorporated into the contract*".

47. When there is such incorporation, every term of such document (except to the extent it is inconsistent with any specific provision in the contract) will apply to the contract.

48. In the present case, the contract does not purport to refer to the terms and conditions of another contract; what has been made an integral part of the contract is the very same NIT and the terms and conditions enclosed therewith, which led to the formation of the contract. The NIT, the LOA and the contract forms part of the same composite transaction.

49. The present case is a quintessential 'single-contract case' and not a 'two-contract case' with which the judgment in ***NBCC (India) Ltd.*** (supra) was concerned.

50. In ***NBCC (India) Ltd.*** (supra), the Supreme Court was concerned with a situation where the terms and conditions as contained in a tender issued by Damodar Valley Corporation (DVC) was sought to be incorporated in the LOI issued by NBCC pursuant to its tender process. In that case, Clause-7.0 of the LOI prescribed that redressal of dispute between NBCC and the respondent therein shall only be through Civil Courts having jurisdiction of Delhi alone. The question was whether the arbitration agreement contained in the terms and conditions in the tender issued by the

DVC could be *ipso facto* made applicable to the contract between the NBCC and the respondent. In that case, the Supreme Court placed reliance on ***M.R. Engineers*** (supra) and held as under:

> ***"19.*** *A perusal of sub-section (5) of Section 7 of the Arbitration Act itself would reveal that it provides for a conscious acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties.*
>
> ***20.*** *It is thus clear that a reference to the document in the contract should be such that shows the intention to incorporate the arbitration clause contained in the document into the contract.*
>
> ***21.*** *The law laid down in M.R. Engineers & Contractors [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] has been followed by this Court in Duro Felguera, S.A. v. Gangavaram Port Ltd. [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] and Elite Engg. & Construction (Hyd.) (P) Ltd. v. Techtrans Construction India (P) Ltd. [Elite Engg. & Construction (Hyd.) (P) Ltd. v. Techtrans Construction India (P) Ltd., (2018) 4 SCC 281 : (2018) 3 SCC (Civ) 60]*
>
> ***22.*** *No doubt that this Court in Inox Wind Ltd. v. Thermocables Ltd. [Inox Wind Ltd. v. Thermocables Ltd., (2018) 2 SCC 519 : (2018) 2 SCC (Civ) 195] has distinguished the law laid down in M.R. Engineers & Contractors[M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] . In the said case (i.e. Inox Wind [Inox Wind Ltd. v. Thermocables Ltd., (2018) 2 SCC 519 : (2018) 2 SCC (Civ) 195]), this Court has held that though general reference to an earlier contract is not sufficient for incorporation of an arbitration clause in the later contract, a general reference to a standard form would be enough for incorporation of the arbitration clause. Though this Court in Inox Wind [Inox Wind Ltd. v. Thermocables Ltd., (2018) 2 SCC 519 : (2018) 2 SCC (Civ) 195] agrees with the judgment in M.R. Engineers & Contractors [M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] , it holds that general reference to a standard form of contract of one party along with those of trade associations and professional bodies will be sufficient to incorporate the arbitration*

> *clause. In the said case (i.e. Inox Wind [Inox Wind Ltd. v. Thermocables Ltd., (2018) 2 SCC 519 : (2018) 2 SCC (Civ) 195]), this Court found that the purchase order was issued by the appellant therein in which it was categorically mentioned that the supply would be as per the terms mentioned therein and in the attached standard terms and conditions. The respondent therein by his letter had confirmed its acceptance. This Court found that the case before it was a case of a single contract and not two-contract case and, therefore, held that the arbitration clause as mentioned in the terms and conditions would be applicable.*
>
> ***23.** The present case is a "two-contract" case and not a "single-contract" case."*

51. As such, the Supreme Court was concerned with a two-contract case and not with a single-contract case. As mentioned, in the present case, the NIT and the terms and conditions enclosed therewith, are the respondent's own tender documents which constitute/form part of the contract. The same has been specifically made part of the contract by way of a clear stipulation in the contract agreement. Clause-2 of the Contract Agreement reads as under:

> *"2. The following documents shall be deemed to form and be read and constructed as per of this Agreement, viz.*
>
> *a. Letter of acceptance of award of contract;*
> *b. Terms and Conditions;*
> *c. Notice Inviting Tender;*
> *d. Bill of Quantities;*
> *e. Scope of work;*
> *f. Addendums, if any*
> *g. Any other documents forming part of the contract.*

52. It would be difficult to conceive of a language more clearly evidencing an intention to incorporate the identified documents into the contract agreement between the parties.

53. The NIT is not an extraneous document to which reference has been made, rather it is a constituent part of a single composite contract between

the parties.

54. Thus, it is unambiguously clear that the NIT and the terms and conditions enclosed therewith have been incorporated into the contract.

55. It is also relevant to note that para-24(v) of the judgment in ***M.R. Engineers*** (supra) contemplates as under:

> ***"24.*** *The scope and intent of Section 7(5) of the Act may therefore be summarised thus:*
>
> .....
>
> *(v) Where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract (as for example the general conditions of contract of the Government where the Government is a party), the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties."*

56. Even assuming *arguendo* that the present case involves reference to standard terms and conditions (forming part of the NIT), the arbitration clause forming part thereof, shall be *ipso facto* applicable.

57. As such, the dispute resolution clause incorporated in Clause-59 of the terms and conditions enclosed with the NIT is operative and binding between the parties.

58. The Clause-59 prescribes the mode of dispute resolution whereas the Clause-60 identifies the Court which will exercise supervisory jurisdiction over it. The same is as under:

59. Dispute Resolution:-

a. Any dispute and or difference arising out of or relating to this contract will be resolved through joint discussion of the authorities' representatives of the concerned parties. However, if the disputes are not resolved by joint discussions, then the matter will be referred for adjudication to a sole Arbitrator appointed by the Vice Chancellor Delhi Technological University, Delhi.

b. The award of the sole Arbitrator shall be final and binding on all the parties. The arbitration proceeding's shall be governed by Indian Arbitration and Conciliation Act 1996 as amended from time to time. The cost of Arbitration shall be borne by the respective parties in equal proportions. During the pendency of the arbitration proceeding and currency of contract, neither party shall be entitled to suspend the work/service to which the dispute relates on account of the arbitration and payment to the contractor shall continue to be made in terms of the contract. Arbitration proceedings will be held at Delhi/New Delhi only.

60. JURISIDICTION OF COURT:-

The courts at Delhi/New Delhi shall have the exclusive jurisdiction to try all disputes, if any, arising out of this agreement between the parties.

Limitation.

59. This Court has already taken note of the protracted correspondence relied upon by the petitioner.

60. The legal position is unmistakable in terms that where the issue of limitation turns upon construction and effect of correspondence (which has continued till end of 2024) the conduct of parties or the question as to whether there has been any acknowledgement, or whether the dispute is live and subsisting based on the conduct of the respondent are all factual issues which require to be adjudicated based on the respective evidence adduced by the parties.

61. The judgments relied upon by the respondents involve fact situations where the concerned Court took the view that no evidentiary exercise was required to come to the conclusion that the claim sought to be raised was in the nature of a '*deadwood*'. The same is not the position here. As such, in these proceedings, it is not apposite for this Court to take a final view and / or to adjudicate the issue as to whether the claims sought to be raised are barred by limitation or not. It follows that the question of limitation *qua* the

claims must be left to be decided by the arbitral tribunal before which, the respondent shall be at liberty to raise appropriate objections as regards limitation, *inter alia* by moving an application under Section 16 of the A&C Act and / or to press for its determination as a preliminary issue.

Authorization

62. The objection that the present petition has not been instituted by a duly authorized person is also not a valid ground to reject the present petition in the peculiar factual conspectus.

63. In the instant case, the petition has been instituted by a partner of the petitioner firm. Even assuming there was an infirmity with the initial authorization, an authorization letter dated 17.09.2025 (supra) has been placed on record whereby all three partners of the firm have expressly authorized Sh. Sunil Kaushik (through whom the present petition has been filed) "*to sign the all documents pertaining to the Hon,ble High Court Matter against the Office In-charge (General Admin) Delhi Technological University, (Former Delhi College of Engineering) Govt. of NCT of Delhi Shahbad, Daulatpur, Bawana Road, Delhi-110042 on behalf of the partners of M/s Shivalik House Keeping Services*."

64. The legal position is also well-settled that a deficiency in authorization is a curable procedural defect.

65. In ***Uday Shankar Triyar v. Ram Kalewar Prasad Singh,*** (2006) 1 SCC 75, it was held as under:

> ***"15.*** *It is, thus, now well settled that any defect in signing the memorandum of appeal or any defect in the authority of the person signing the memorandum of appeal, or the omission to file the vakalatnama executed by the appellant, along with the appeal, will*

not invalidate the memorandum of appeal, if such omission or defect is not deliberate and the signing of the memorandum of appeal or the presentation thereof before the appellate court was with the knowledge and authority of the appellant. Such omission or defect being one relatable to procedure, can subsequently be corrected. It is the duty of the office to verify whether the memorandum of appeal was signed by the appellant or his authorised agent or pleader holding appropriate vakalatnama. If the office does not point out such defect and the appeal is accepted and proceeded with, it cannot be rejected at the hearing of the appeal merely by reason of such defect, without giving an opportunity to the appellant to rectify it. The requirement that the appeal should be signed by the appellant or his pleader (duly authorised by a vakalatnama executed by the appellant) is, no doubt, mandatory. But it does not mean that non-compliance should result in automatic rejection of the appeal without giving an opportunity to the appellant to rectify the defect. If and when the defect is noticed or pointed out, the court should, either on an application by the appellant or suo motu, permit the appellant to rectify the defect by either signing the memorandum of appeal or by furnishing the vakalatnama. It should also be kept in view that if the pleader signing the memorandum of appeal has appeared for the party in the trial court, then he need not present a fresh vakalatnama along with the memorandum of appeal, as the vakalatnama in his favour filed in the trial court will be sufficient authority to sign and present the memorandum of appeal having regard to Rule 4(2) of Order 3 CPC, read with Explanation (c) thereto. In such an event, a mere memo referring to the authority given to him in the trial court may be sufficient. However, filing a fresh vakalatnama with the memo of appeal will always be convenient to facilitate the processing of the appeal by the office.

17. *Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:*

(i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;

(ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

> *(iii) where the non-compliance or violation is proved to be deliberate or mischievous;*
>
> *(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;*
>
> *(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant."*

In any event, the aspect as regards deficiency of any authorisation, can also be urged in the arbitral proceedings.

CONCLUSION

66. In the circumstances, the objections raised by the respondent are found to be untenable for the purpose of resisting constitution of an arbitral tribunal.

67. The arbitration clause in the present case contemplates that the Vice Chancellor of the respondent shall appoint an arbitrator.

68. The legal position is well-settled that such a stipulation conferring right of unilateral appointment to one of the contracting parties is inoperable, void and *non est*. In this regard reference may be made to the following judgments:

i. The Supreme Court in the case of ***Perkins Eastman Architects DPC v. HSCC (India) Ltd***., (2020) 20 SCC 760 held as under:

> *"21. But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] Para 50 of the decision shows that this Court was Energo Enggith the issue, "whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator" The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person*

cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd."

ii. In ***Bhadra International (India) Pvt. Ltd. v. Airports Authority of India,*** 2026 SCC OnLine SC 7, the Court held as under:

"123. A conspectus of the aforesaid detailed discussion on the position of law as regards Section 12 of the Act, 1996, is as follows:—

i. The principle of equal treatment of parties provided in Section 18 of the Act, 1996, applies not only to the arbitral proceedings but also to the procedure for appointment of arbitrators. Equal treatment of the parties entails that the parties must have an equal say in the constitution of the arbitral tribunal.

ii. Sub-section (5) of Section 12 provides that any person whose relationship with the parties or counsel, or the dispute, whether direct or indirect, falls within any of the categories specified in the Seventh Schedule would be ineligible to be appointed as an arbitrator. Since, the ineligibility stems from the operation of law, not only is a person having an interest in the dispute or its outcome ineligible to act as an arbitrator, but appointment by such a person would be ex facie invalid.

iii. The words "an express agreement in writing" in the proviso to Section 12(5) means that the right to object to the appointment of an

ineligible arbitrator cannot be taken away by mere implication. The agreement referred to in the proviso must be a clear, unequivocal written agreement.

iv. When an arbitrator is found to be ineligible by virtue of Section 12(5) read with the Seventh Schedule, his mandate is automatically terminated. In such circumstance, an aggrieved party may approach the court under Section 14 read with Section 15 for appointment of a substitute arbitrator. Whereas, when an award has been passed by such an arbitrator, an aggrieved party may approach the court under Section 34 for setting aside the award.

v. In arbitration, the parties vest jurisdiction in the tribunal by exercising their consent in furtherance of a valid arbitration agreement. An arbitrator who lacks jurisdiction cannot make an award on the merits. Hence, an objection to the inherent lack of jurisdiction can be taken at any stage of the proceedings."

iii. This Court in ***Engineering Projects India Limited v. Allied Construction,*** 2026 SCC OnLine Del 4000, held as under:

"6. The legal position is that under Section 12(5) read with Seventh Schedule of the Act an employee of the party in dispute is ineligible to be appointed as an arbitrator and cannot nominate or appoint any other person as an arbitrator. The unilateral appointment in absence of express agreement in writing between the parties to waive the applicability of Section 12(5) of the Act is void ab initio. The participation in the arbitration proceedings cannot be construed to be waiver under the proviso to Section 12(5) of the Act."

69. In the circumstances, it is incumbent upon this Court to appoint an independent Sole Arbitrator to adjudicate the disputes between the parties.

70. Accordingly, Ms. Aastha Chawla, Advocate (Mob. No.: +91 9910646789) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

71. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as

required under Section 12 of the A&C Act.

72. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

73. Needless to say, all jurisdictional objections raised by the respondent *inter alia,* on grounds of limitation, existence of arbitration agreement and / or any other objection/s that may be raised, are kept open for consideration by the Arbitral Tribunal.

74. 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 merits, in accordance with law.

75. The observations made hereinabove are only for the purpose of taking a *prima facie* view as to whether an Arbitral Tribunal is required to be constituted.

76. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

AUGUST 31, 2026
cl,ss