2026:DHC:9038

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

% *Date of Decision: 5th October, 2026*

\# **CNR No. DLHC010289992026**

\+ ARB.P. 1094/2026

ATUL RAAIZADA .....Petitioner

Through: Mr. Vipul Wadhwa and Ms. Kasika Gera, Advocates.

versus

HERO FUTURE ENERGIES PVT. LTD. .....Respondent

Through: Mr. Yash Srivastava, Ms. Naimishi Verma and Mr. Ayushman Das, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

I.A. 17520/2026 *(Exemption)*

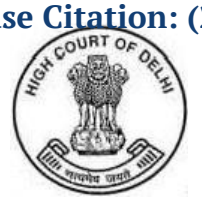
1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

ARB.P. 1094/2026

3. This petition is filed under Section 11(5) of Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of a Sole Arbitrator.

4. To the extent necessary, the facts as pleaded by the Petitioner are that Petitioner was associated with the Respondent and its predecessor entity from December, 2012 till October, 2020. Petitioner was granted 2,30,500 Employee Stock Options ('ESOPs') vide letter dated 04.03.2016 in accordance with Employee Stock Option Plan, 2015 ('ESOP Plan') with the terms and conditions detailed therein.





5. The disputes arose according to the Petitioner, when the balance cash compensation allegedly due and payable to the Petitioner in the sum of Rs. 35,03,35,120/- along with interest at the rate of 10% per annum was not completely paid, leading Petitioner to send a legal notice on 27.03.2026, demanding the balance cash compensation. The same was followed by a notice invoking arbitration, since the ESOP Plan contained an Arbitration Agreement in the form of Clause 22, which envisages arbitration between the parties. By reply dated 22.05.2026, Respondent objected to the invocation of arbitration, alleging that there was no subsisting dispute on account of full and final settlement of all the dues and reiterated that Petitioner has consciously encashed the cheque dated 22.08.2024, compelling Petitioner to approach this Court.

6. Even before this Court, learned counsel for the Respondent *inter alia* objects to reference to arbitration on the ground that Petitioner has accepted all the dues payable in full and final settlement and there is accord and satisfaction. The objection has no merit. It is trite that dispute pertaining to accord and satisfaction and/or full and final settlement of claims is the domain of the Arbitral Tribunal and not within the scope and ambit of the jurisdiction of the Referral Court under Section 11(6) of 1996 Act. In this context, I may allude to the relevant passages from the judgement of the Supreme Court in ***SBI General Insurance Company Limited v. Krish Spinning, 2024 SCC OnLine SC 1754,*** as follows:-

> *"**D. ISSUES FOR DETERMINATION***
>
> ***34**. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following three questions fall for our consideration:-*
>
> ***i.** Whether the execution of a discharge voucher towards the full and final settlement between the parties would operate as a bar to invoke arbitration?*

ii. *What is the scope and standard of judicial scrutiny that an application under Section 11(6) of the Act, 1996 can be subjected to when a plea of "accord and satisfaction" is taken by the defendant?*

iii. *What is the effect of the decision of this Court in* ***In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act, 1899*** *on the scope of powers of the referral court under Section 11 of the Act, 1996?"*

xxx *xxx* *xxx*

"a. Whether the arbitration agreement contained in a substantive contract survives even after the underlying contract is discharged by "accord and satisfaction"?

48.*Arbitration for the purpose of resolving any dispute pertaining to any claim which has been "fully and finally settled" between the parties can only be invoked if the arbitration agreement survives even after the discharge of the substantive contract.*

49.*The arbitration agreement, by virtue of the presumption of separability, survives the principal contract in which it was contained. Section 16(1) of the Act, 1996 which is based on Article 16 of the UNCITRAL Model Law on International Commercial Arbitration, 1985 (hereinafter, "****Model Law****") embodies the presumption of separability. There are two aspects to the doctrine of separability as contained in the Act, 1996:-*

> ***i***. *An arbitration clause forming part of a contract is treated as an agreement independent of the other terms of the contract.*
>
> ***ii***. *A decision by the arbitral tribunal declaring the contract as null and void does not, ipso facto, make the arbitration clause invalid.*

50. *The doctrine of separability was not part of the legislative scheme under the Arbitration Act, 1940. However, with the enactment of the Act, 1996, the doctrine was expressly incorporated. This Court in National Agricultural Coop. Marketing Federation India Ltd. v. Gains Trading Ltd., (2007) 5 SCC 692, while interpreting Section 16 of the Act, 1996, held that even if the underlying contract comes to an end, the arbitration agreement contained in such a contract survives for the purpose of resolution of disputes between the parties.*

51. *The fundamental premise governing the doctrine of separability is that the arbitration agreement is incorporated by the parties to a contract with the mutual intention to settle any disputes that may arise under or in respect of or with regard to the underlying substantive contract, and thus by its inherent nature is independent of the substantive contract.*

52. *In Heyman v. Darwins Ltd., [1942] A.C. 356, it was held by the House of Lords that the repudiation or breach of a contract does not extinguish the arbitration agreement as it survives for the purpose of resolution of any outstanding claims arising out of the breach. It was observed thus:*

"I am, accordingly, of the opinion that what is commonly called repudiation or total breach of a contract, whether acquiesced in by the other party or not, does not abrogate the contract, though it may relieve the injured party of the duty of further fulfilling the obligations which he has by the contract undertaken to the repudiating party. The contract is not put out of existence, though all further performance of the obligations undertaken by each party in favour of the other may cease. It survives for the purpose of measuring the claims arising out of the breach, and the arbitration clause survives for determining the mode of their settlement. The purposes of the contract have failed, but the arbitration clause is not one of the purposes of the contract."

(Emphasis supplied)

***53**. Thus, even if the contracting parties, in pursuance of a settlement, agree to discharge each other of any obligations arising under the contract, this does not ipso facto mean that the arbitration agreement too would come to an end, unless the parties expressly agree to do the same. The intention of the parties in discharging a contract by "accord and satisfaction" is to relieve each other of the existing or any new obligations under the contract. Such a discharge of obligations under the substantive contract cannot be construed to mean that the parties also intended to relieve each other of their obligation to settle any dispute pertaining to the original contract through arbitration.*

***54**. Although ordinarily no arbitrable disputes may subsist after execution of a full and final settlement, yet any dispute pertaining to the full and final settlement itself, by necessary implication being a dispute arising out of or in relation to or under the substantive contract, would not be precluded from reference to arbitration as the arbitration agreement contained in the original contract continues to be in existence even after the parties have discharged the original contract by "accord and satisfaction".*

***55**. The aforesaid position of law has also been consistently followed by this Court as evident from many decisions. In Boghara Polyfab (supra), while rejecting the contention that the mere act of signing a "full and final discharge voucher" would act as a bar to arbitration, this Court held as follows:*

"44. ... None of the three cases relied on by the appellant lay down a proposition that mere execution of a full and final settlement receipt or a discharge voucher is a bar to arbitration, even when the validity thereof is challenged by the claimant on the ground of fraud, coercion or undue influence. Nor do they lay down a proposition that even if the discharge of contract is not genuine or legal, the claims cannot be referred to arbitration.[...]"

***56**. Again, in R.L. Kalathia and Company v. State of Gujarat, (2011) 2 SCC 400, it was re-iterated that the mere issuance of the no-dues*

certificate would not operate as a bar against the raising of genuine claims even after the date of issuance of such certificate. The relevant observations are extracted hereinbelow:

> *"13. From the above conclusions of this Court, the following principles emerge:*
>
> *(1) Merely because the contractor has issued "no-dues certificate", if there is an acceptable claim, the court cannot reject the same on the ground of issuance of "no-dues certificate".*
>
> *(ii) Inasmuch as it is common that unless a discharge certificate is given in advance by the contractor, payment of bills are generally delayed, hence such a clause in the contract would not be an absolute bar to a contractor raising claims which are genuine at a later date even after submission of such "no-claim certificate".*
>
> *(iii) Even after execution of full and final discharge voucher/receipt by one of the parties, if the said party is able to establish that he is entitled to further amount for which he is having adequate materials, he is not barred from claiming such amount merely because of acceptance of the final bill by mentioning "without prejudice" or by issuing "no-dues certificate".*
>
> *(Emphasis supplied)*

***57**. The position that emerges from the aforesaid discussion is that there is no rule of an absolute kind which precludes arbitration in cases where a full and final settlement has been arrived at. In Boghara Polyfab (supra), discussing in the context of a case similar to the one at hand, wherein the discharge voucher was alleged to have been obtained on ground of coercion, it was observed that the discharge of a contract by full and final settlement by issuance of a discharge voucher or a no-dues certificate extends only to those vouchers or certificates which are validly and voluntarily executed. Thus, if the party said to have executed the discharge voucher or the no dues certificate alleges that the execution was on account of fraud, coercion or undue influence exercised by the other party and is able to establish such an allegation, then the discharge of the contract by virtue of issuance of such a discharge voucher or no dues certificate is rendered void and cannot be acted upon.*

***58**. It was further held in Boghara Polyfab (supra) that the mere execution of a full and final settlement receipt or a discharge voucher would not by itself operate as a bar to arbitration when the validity of such a receipt or voucher is challenged by the claimant on the ground of fraud, coercion or undue influence. In other words, where the parties are not ad idem over accepting the execution of the no-claim certificate or the discharge voucher, such disputed discharge voucher may itself give rise to an arbitrable dispute.*

***59**. Once the full and final settlement of the original contract itself*

becomes a matter of dispute and disagreement between the parties, then such a dispute can be categorised as one arising "in relation to" or "in connection with" or "upon" the original contract which can be referred to arbitration in accordance with the arbitration clause contained in the original contract, notwithstanding the plea that there was a full and final settlement between the parties.

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***73**. The net effect of the decisions in SBP & Co. (supra) and Boghara Polyfab (supra) was that the scope for interference available to the referral courts when acting under Section 11 of the Act, 1996 was substantially expanded. The referral courts were conferred with the discretion to conduct mini trials and indulge in the appreciation of evidence on the issues concerned with the subject matter of arbitration. The Law Commission of India in its 246th report took note of the issue of significant delays being caused to the arbitral process due to enlarged scope of judicial interference at the stage of appointment of arbitrator and suggested as follows:*

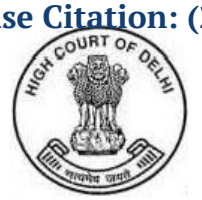
> ***i**. **First**, that the power of appointment conferred upon the Chief Justice be devolved on to the Supreme Court and the High Court, as the case may be; and*
>
> ***ii**. **Secondly**, the power of appointment under Section 11 be clarified to be an administrative power and not a judicial one.*
>
> ***iii**. **Thirdly**, the scope of interference under Sections 8 and 11 respectively of the Act, 1996 be restricted only to those cases where the court finds that no arbitration agreement exists or is null and void.*

***74**. The Law Commission suggested the insertion of Section 11(6-A) in the Act, 1996. The aforesaid recommendations of the Commission were taken note of by the Parliament and accordingly the Act, 1996 was amended in 2015 to incorporate Section 11(6-A), which reads thus:*

> *"(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under subsection (4) or subsection (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement."*

***75**. Interestingly, Section 11(6-A) was omitted by the 2019 amendment to the Act, 1996 on the basis of a report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India. However, in the absence of the omission being notified, Section 11(6-A) of the Act, 1996 continues to remain on the statute book and thus has to be given effect as such.*

***76**. The impact of the addition of Section 11(6-A) was elaborately discussed by this Court in Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 as follows:*





"48. […] From a reading of Section 11(6-A), the intention of the legislature is crystal clear i.e. the court should and need only look into one aspect—the existence of an arbitration agreement. What are the factors for deciding as to whether there is an arbitration agreement is the next question. The resolution to that is simple—it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.

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59. The scope of the power under Section 11(6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. [(2005) 8 SCC 618] and Boghara Polyfab [(2009) 1 SCC 267]. This position continued till the amendment brought about in 2015. After the amendment, all that the courts need to see is whether an arbitration agreement exists—nothing more, nothing less. The legislative policy and purpose is essentially to minimise the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected."

(Emphasis supplied)

77. Despite the decision in Duro Felguera (supra), this Court in United India Insurance Co. Ltd. v. Antique Art Exports Pvt. Ltd., (2019) 5 SCC 362, while dealing with the issue of "full and final settlement" in the context of appointment of an arbitrator, held that mere bald allegation by a party that the discharge voucher was obtained under coercion or undue influence would not entitle it to seek referral of the dispute to arbitration unless it is able to produce prima facie evidence of the same during the course of proceedings under Section 11(6) of the Act, 1996. Important paragraphs from the said decision are extracted hereinbelow:

*"**15**. From the proposition which has been laid down by this Court, what reveals is that a mere plea of fraud, coercion or undue influence in itself is not enough and the party who alleged is under obligation to prima facie establish the same by placing satisfactory material on record before the Chief Justice or his Designate to exercise power under Section 11(6) of the Act, which has been considered by this Court in New India Assurance Co. Ltd. case […]*

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***17**. It is true that there cannot be a rule of its kind that mere allegation of discharge voucher or no claim certificate being obtained by fraud/coercion/undue influence practised by other party in itself is sufficient for appointment of the arbitrator unless the claimant who alleges that execution of the discharge agreement or no claim certificate was obtained on account of fraud/coercion/undue influence practised by the other party is able to produce prima facie evidence to*

substantiate the same, the correctness thereof may be open for the Chief Justice/his Designate to look into this aspect to find out at least prima facie whether the dispute is bona fide and genuine in taking a decision to invoke Section 11(6) of the Act.

***18**. In the instant case, the facts are not in dispute that for the two incidents of fire on 25-9-2013 and 25-10-2013, the appellant Company based on the Surveyor's report sent emails on 5-5-2016 and 24-6-2016 for settlement of the claims for both the fires dated 25-9-2013 and 25-10-2013 which was responded by the respondent through email on the same date itself providing all the necessary information to the regional office of the Company and also issued the discharge voucher in full and final settlement with accord and satisfaction. Thereafter, on 12-7-2016, the respondent desired certain information with details, that too was furnished and for the first time on 27-7-2016, it took a U-turn and raised a voice of undue influence/coercion being used by the appellant stating that it being in financial distress was left with no option than to proceed to sign on the dotted lines. As observed, the phrase in itself is not sufficient unless there is a prima facie evidence to establish the allegation of coercion/undue influence, which is completely missing in the instant case.*

***19**. In the given facts and circumstances, we are satisfied that the discharge and signing the letter of subrogation was not because of any undue influence or coercion as being claimed by the respondent and we find no difficulty to hold that upon execution of the letter of subrogation, the claim was settled with due accord and satisfaction leaving no arbitral dispute to be examined by an arbitrator to be appointed under Section 11(6) of the Act.*

***20**. The submission of the learned counsel for the respondent that after insertion of sub-section (6-A) to Section 11 of the Amendment Act, 2015 the jurisdiction of this Court is denuded and the limited mandate of the Court is to examine the factum of existence of an arbitration and relied on the judgment 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] The exposition in this decision is a general observation about the effect of the amended provisions which came to be examined under reference to six arbitrable agreements (five agreements for works and one corporate guarantee) and each agreement contains a provision for arbitration and there was serious dispute between the parties in reference to constitution of Arbitral Tribunal whether there has to be Arbitral Tribunal pertaining to each agreement. In the facts and circumstances, this Court took note of sub-section (6-A) introduced by the Amendment Act, 2015 to Section 11 of the Act and in that context observed that the preliminary disputes are to be examined by the arbitrator and are not for the Court to be examined within the limited scope available for*

appointment of arbitrator under Section 11(6) of the Act. Suffice it to say that appointment of an arbitrator is a judicial power and is not a mere administrative function leaving some degree of judicial intervention; when it comes to the question to examine the existence of a prima facie arbitration agreement, it is always necessary to ensure that the dispute resolution process does not become unnecessarily protracted.

***21**. In the instant case, prima facie no dispute subsisted after the discharge voucher being signed by the respondent without any demur or protest and claim being finally settled with accord and satisfaction and after 11 weeks of the settlement of claim a letter was sent on 27-7-2016 for the first time raising a voice in the form of protest that the discharge voucher was signed under undue influence and coercion with no supportive prima facie evidence being placed on record in absence thereof, it must follow that the claim had been settled with accord and satisfaction leaving no arbitral dispute subsisting under the agreement to be referred to the arbitrator for adjudication.*

***22**. In our considered view, the High Court has committed a manifest error in passing the impugned order and adopting a mechanical process in appointing the arbitrator without any supportive evidence on record to prima facie substantiate that an arbitral dispute subsisted under the agreement which needed to be referred to the arbitrator for adjudication."*

(Emphasis supplied)

***78**. It is pertinent to observe that in Antique Art (supra) the Court placed reliance on the decisions in Master Construction (supra) and New India Assurance (supra). Both these decisions were delivered before the insertion of Section 11(6-A) by the 2015 amendment to the Act, 1996. Thus, this Court in Antique Art (supra) failed to take into account the legislative intent behind the introduction of Section 11(6-A), which was also succinctly explained in Duro Felguera (supra).*

***79**. A three-Judge Bench of this Court in Mayavati Trading Private Limited v. Pradyut Deb Burman, (2019) 8 SCC 714 overruled the decision in Antique Art (supra) and clarified that the position of law existing prior to the 2015 amendment to the Act, 1996 under which referral courts had the power to examine the aspect of "accord and satisfaction" had come to be legislatively overruled by Section 11(6-A) of the Act, 1996. The Court, while affirming the reasoning given in Duro Felguera (supra), observed thus:*

"10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid

judgment [United India Insurance Co. Ltd. v. Antique Art Exports (P) Ltd., (2019) 5 SCC 362 : (2019) 2 SCC (Civ) 785], as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera, SA [Duro Felguera, SA v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] — see paras 48 & 59

11. We, therefore, overrule the judgment in Antique Art Exports (P) Ltd. [United India Insurance Co. Ltd. v. Antique Art Exports (P) Ltd., (2019) 5 SCC 362 : (2019) 2 SCC (Civ) 785] as not having laid down the correct law but dismiss this appeal for the reason given in para 3 above."

(Emphasis supplied)

***80**. A two-Judge Bench of this Court in Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 was called upon to determine the scope of judicial interference at the stage of Section 11(6) petition wherein the plea of claims being time barred was taken by the defendant. Referring to the principal of competence-competence enshrined in Section 16 of the Act, 1996 and the legislative intent behind the introduction of Section 11(6-A) to Act, 1996 by the 2015 amendment, this Court held that the issue of limitation being a mixed question of law and fact should be best left to the tribunal to decide. The referral court should restrict its examination to whether an arbitration agreement between the parties exists. The relevant observations are reproduced hereinbelow:*

"7.10. In view of the legislative mandate contained in Section 11(6-A), the Court is now required only to examine the existence of the arbitration agreement. All other preliminary or threshold issues are left to be decided by the arbitrator under Section 16, which enshrines the kompetenz-kompetenz principle.

*7.11. The doctrine of "kompetenz-kompetenz", also referred to as "compétence-compétence", or "compétence de la recognized", implies that the Arbitral Tribunal is empowered and has the competence to rule on its own jurisdiction, including determining all jurisdictional issues, and the existence or validity of the arbitration agreement. This doctrine is intended to minimise judicial intervention, so that the arbitral process is not thwarted at the threshold, when a preliminary objection is raised by one of the parties. **The doctrine of kompetenz-kompetenz is, however, subject to the exception i.e. when the arbitration agreement itself is impeached as being procured by fraud or deception**. This exception would also apply to cases where the parties in the process of negotiation, may have entered into a draft agreement as an antecedent step prior to executing the final contract. [....] 7.12. The legislative intent underlying the 1996 Act is party*

autonomy and minimal judicial intervention in the arbitral process. Under this regime, once the arbitrator is appointed, or the tribunal is constituted, all issues and objections are to be decided by the Arbitral Tribunal.

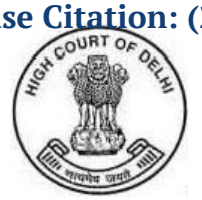
7.13. In view of the provisions of Section 16, and the legislative policy to restrict judicial intervention at the pre-reference stage, the issue of limitation would require to be decided by the arbitrator. Sub-section (1) of Section 16 provides that the Arbitral Tribunal may rule on its own jurisdiction, "including any objections" with respect to the existence or validity of the arbitration agreement. Section 16 is as an inclusive provision, which would comprehend all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. The issue of limitation is a jurisdictional issue, which would be required to be decided by the arbitrator under Section 16, and not the High Court at the pre-reference stage under Section 11 of the Act. Once the existence of the arbitration agreement is not disputed, all issues, including jurisdictional objections are to be decided by the arbitrator.

7.14. In the present case, the issue of limitation was raised by the respondent Company to oppose the appointment of the arbitrator under Section 11 before the High Court. Limitation is a mixed question of fact and law. In ITW Signode (India) Ltd. v. CCE [ITW Signode (India) Ltd. v. CCE, (2004) 3 SCC 48] a three-Judge Bench of this Court held that the question of limitation involves a question of jurisdiction. The findings on the issue of limitation would be a jurisdictional issue. Such a jurisdictional issue is to be determined having regard to the facts and the law. Reliance is also placed on the judgment of this Court in NTPC Ltd. v. Siemens Atkeingesellschaft [NTPC Ltd. v. Siemens Atkeingesellschaft, (2007) 4 SCC 451], wherein it was held that the Arbitral Tribunal would deal with limitation under Section 16 of the 1996 Act. If the tribunal finds that the claim is a dead one, or that the claim was barred by limitation, the adjudication of these issues would be on the merits of the claim. Under sub-section (5) of Section 16, the tribunal has the obligation to decide the plea; and if it rejects the plea, the arbitral proceedings would continue, and the tribunal would make the award. Under sub-section (6) a party aggrieved by such an arbitral award may challenge the award under Section 34. […]"

(Emphasis supplied)

***81**. In Union of India v. Pradeep Vinod Construction Company, 2019 INSC 1241 this Court left the issue of "accord and satisfaction" to be decided by the arbitrator and held thus:*

"16. […] On behalf of the Respondent, it has been seriously disputed that issuance of "No Claim" certificate as to the supplementary agreement recording accord and satisfaction as on 06.05.2014 (CA





No. 6400/2016) and issuance of "No Claim" certificate on 28.08.2014 (CA No. 6420/2016) that they were issued under compulsion and due to undue influence by the railway authorities. We are not inclined to go into the merits of the contention of the parties. It is for the arbitrator to consider the claim of the Respondent(s) and the stand of the Appellant-railways. This contention raised by the parties are left open to be raised before the arbitrator."

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***92**. The position that emerges from the aforesaid discussion of law on the subject as undertaken by us can be summarised as follows:—*

***i**. There were two conflicting views which occupied the field under the Arbitration Act, 1940. While the decisions in Damodar Valley (supra) and Amar Nath (supra) took the view that the disputes pertaining to "accord and satisfaction" should be left to the arbitrator to decide, the view taken in P.K. Ramaiah (supra) and Nathani Steels (supra) was that once a "full and final settlement" is entered into between the parties, no arbitrable disputes subsist and therefore reference to arbitration must not be allowed.*

***ii**. Under the Act, 1996, the power under Section 11 was characterised as an administrative one as acknowledged in the decision in Konkan Railway (supra) and this continued till the decision of a seven-Judge Bench in SBP & Co. (supra) overruled it and significantly expanded the scope of judicial interference under Sections 8 and 11 respectively of the Act, 1996. The decision in Jayesh Engineering (supra) adopted this approach in the context of "accord and satisfaction" cases and held that the issue whether the contract had been fully worked out and whether payments had been made in full and final settlement of the claims are issues which should be left for the arbitrator to adjudicate upon.*

***iii**. The decision in SBP & Co. (supra) was applied in Boghara Polyfab (supra) and it was held by this Court that the Chief Justice or his designate, in exercise of the powers available to them under Section 11 of the Act, 1996, can either look into the question of "accord and satisfaction" or leave it for the decision of the arbitrator. However, it also specified that in cases where the Chief Justice was satisfied that there was indeed "accord and satisfaction", he could reject the application for appointment of arbitrator. The prima facie standard of scrutiny was also expounded, stating that the party seeking arbitration would have to prima facie establish that there was fraud or coercion involved in the signing of the discharge certificate. The position elaborated in Boghara Polyfab (supra) was adopted in a number of subsequent decisions, wherein it was held that a mere bald plea of fraud or coercion was not sufficient for a party to seek reference to arbitration and prima facie evidence for the same was*

required to be provided, even at the stage of the Section 11 petition.

***iv**. The view taken by SBP & Co. (supra) and Boghara Polyfab (supra) was seen by the legislature as causing delays in the disposal of Section 11 petitions, and with a view to overcome the same, Section 11(6-A) was introduced in the Act, 1996 to limit the scope of enquiry under Section 11 only to the extent of determining the "existence" of an arbitration agreement. This intention was acknowledged and given effect to by this Court in the decision in Duro Felguera (supra) wherein it was held that the enquiry under Section 11 only entailed an examination whether an arbitration agreement existed between the parties or not and "nothing more or nothing less".*

***v**. Despite the introduction of Section 11(6-A) and the decision in Duro Felguera (supra), there have been diverging views of this Court on whether the scope of referral court under Section 11 of the Act, 1996 includes the power to go into the question of "accord and satisfaction". In Antique Art (supra) it was held that unless some prima facie proof of duress or coercion is adduced by the claimant, there could not be a referral of the disputes to arbitration. This view, however, was overruled in Mayavati Trading (supra) which reiterated the view taken in Duro Felguera (supra) and held that post the 2015 amendment to the Act, 1996, it was no more open to the Court while exercising its power under Section 11 of the Act, 1996 to go into the question of whether "accord and satisfaction" had taken place.*

***vi**. The decision in Vidya Drolia (supra) although adopted the view taken in Mayawati Trading (supra) yet it provided that in exceptional cases, where it was manifest that the claims were exfacie time barred and deadwood, the Court could interfere and refuse reference to arbitration. Recently, this view in the context of "accord and satisfaction" was adopted in NTPC v. SPML (supra) wherein the "eye of the needle" test was elaborated. It permits the referral court to reject arbitration in such exceptional cases where the plea of fraud or coercion appears to be ex-facie frivolous and devoid of merit.*

***93**. Thus, the position after the decisions in Mayavati Trading (supra) and Vidya Drolia (supra) is that ordinarily, the Court while acting in exercise of its powers under Section 11 of the Act, 1996, will only look into the existence of the arbitration agreement and would refuse arbitration only as a demurrer when the claims are ex-facie frivolous and non-arbitrable.*

iii**. **What is the effect of the decision of this Court in In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act, 1899 on the scope of powers of the referral court under Section 11 of the Act, 1996?

***94**. A seven-Judge Bench of this Court, in **In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act, 1899** reported in **2023 INSC 1066**,*

speaking eruditely through one of us, Dr. Dhananjaya Y. Chandrachud, Chief Justice of India, undertook a comprehensive analysis of Sections 8 and 11 respectively of the Act, 1996 and, inter alia, made poignant observations about the nature of the power vested in the Courts insofar as the aspect of appointment of arbitrator is concerned. Some of the relevant observations made by this Court in In Re : Interplay (supra) are extracted hereinbelow:

> *"179. […] However, the effect of the principle of competence-competence is that the arbitral tribunal is vested with the power and authority to determine its enforceability. The question of enforceability survives, pending the curing of the defect which renders the instrument inadmissible. By appointing a tribunal or its members, this Court (or the High Courts, as the case may be) is merely giving effect to the principle enshrined in Section 16. The appointment of an arbitral tribunal does not necessarily mean that the agreement in which the arbitration clause is contained as well as the arbitration agreement itself are enforceable. The arbitral tribunal will answer precisely these questions.*
>
> *xxx xxx xxx*
>
> *185. The corollary of the doctrine of competence-competence is that courts **may only examine whether an arbitration agreement exists** on the basis of the prima facie standard of review. The nature of objections to the jurisdiction of an arbitral tribunal on the basis that stamp-duty has not been paid or is inadequate is such as cannot be decided on a prima facie basis. Objections of this kind will require a detailed consideration of evidence and submissions and a finding as to the law as well as the facts. Obligating the court to decide issues of stamping at the Section 8 or Section 11 stage will defeat the legislative intent underlying the Arbitration Act.*
>
> *186. The purpose of vesting courts with certain powers under Sections 8 and 11 of the Arbitration Act is to facilitate and enable arbitration as well as to ensure that parties comply with arbitration agreements. The disputes which have arisen between them remain the domain of the arbitral tribunal (subject to the scope of its jurisdiction as defined by the arbitration clause). The exercise of the jurisdiction of the courts of the country over the substantive dispute between the parties is only possible at two stages:*
>
> *a. If an application for interim measures is filed under Section 9 of the Arbitration Act; or*
>
> *b. If the award is challenged under Section 34.*
>
> *Issues which concern the payment of stamp-duty fall within the remit of the arbitral tribunal. The discussion in the preceding segments also make it evident that courts are not required to deal with*

the issue of stamping at the stage of granting interim measures under Section 9."

(Emphasis supplied)

xxx *xxx* *xxx*

***108**. Section 11 of the Act, 1996 is provided to give effect to the mutual intention of the parties to settle their disputes by arbitration in situations where the parties fail to appoint an arbitrator(s). The parameters of judicial review laid down for Section 8 differ from those prescribed for Section 11. The view taken in SBP & Co. (supra) and affirmed in Vidya Drolia (supra) that Sections 8 and 11 respectively of the Act, 1996 are complementary in nature was legislatively overruled by the introduction of Section 11(6-A) in 2015. Thus, although both these provisions intend to compel parties to abide by their mutual intention to arbitrate, yet the scope of powers conferred upon the courts under both the sections are different.*

xxx *xxx* *xxx*

***110**. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.*

***111**. The use of the term 'examination' under Section 11(6-A) as distinguished from the use of the term 'rule' under Section 16 implies that the scope of enquiry under section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the arbitral tribunal to 'rule' under Section 16. The prima facie view on existence of the arbitration agreement taken by the referral court does not bind either the arbitral tribunal or the court enforcing the arbitral award.*

***112**. The aforesaid approach serves a two-fold purpose - firstly, it allows the referral court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the arbitral tribunal to rule on the issue of existence of the arbitration agreement in depth.*

***113**. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re : Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:*

*"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 a 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. *Accordingly, the "other issues" also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. […]"*

(Emphasis supplied)

114. *In view of the observations made by this Court in In Re : Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re : Interplay (supra).*

115. *The dispute pertaining to the "accord and satisfaction" of claims is not one which attacks or questions the existence of the arbitration agreement in any way. As held by us in the preceding parts of this judgment, the arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by "accord and satisfaction".*

116. *The question of "accord and satisfaction", being a mixed question of law and fact, comes within the exclusive jurisdiction of the arbitral tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the arbitral tribunal, should not be looked into by the referral court, even for a prima facie determination, before the arbitral tribunal first has had the opportunity of looking into it.*

117. *By referring disputes to arbitration and appointing an arbitrator by exercise of the powers under Section 11, the referral court upholds and gives effect to the original understanding of the contracting parties that the specified disputes shall be resolved by arbitration. Mere appointment of the arbitral tribunal doesn't in any way mean that the referral court is diluting the sanctity of "accord and satisfaction" or is allowing the claimant to walk back on its contractual undertaking. On the contrary, it ensures that the principal of arbitral autonomy is upheld and the legislative intent of minimum judicial interference in arbitral proceedings is given full effect. Once the arbitral tribunal is constituted, it is always*

open for the defendant to raise the issue of "accord and satisfaction" before it, and only after such an objection is rejected by the arbitral tribunal, that the claims raised by the claimant can be adjudicated.

xxx *xxx* *xxx*

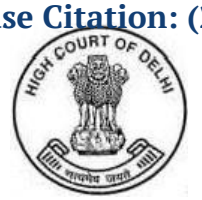
F. <u>CONCLUSION</u>

***135**. The existence of the arbitration agreement as contained in Clause 13 of the insurance policy is not disputed by the appellant. The dispute raised by the claimant being one of quantum and not of liability, prima facie, falls within the scope of the arbitration agreement. The dispute regarding "accord and satisfaction" as raised by the appellant does not pertain to the existence of the arbitration agreement, and can be adjudicated upon by the arbitral tribunal as a preliminary issue."*

7. It is palpably clear from the reading of the aforesaid judgment that dispute regarding accord and satisfaction does not pertain to the existence of the arbitration agreement and is to be left to the Arbitral Tribunal. Learned counsel for the Petitioner also rightly relies on a recent judgment of the Supreme Court on this aspect in ***Arabian Exports Private Limited v. National Insurance Company Limited, (2025) 10 SCC 388,*** followed by this Court in ***Goyala Infra Projects Pvt. Ltd. v. Engineer in Chief Military Engineering Service, 2025 SCC OnLine Del 4507***, where referring to the judgment of three-Judge Bench in ***Krish Spinning (supra),*** it has been held that any dispute of accord and satisfaction or full and final settlement will have to be left to the Arbitral Tribunal following the doctrine and principle of *Kompetenz-Kompetenz*. Relevant paragraphs of ***Arabian Exports (supra)*** are as follows:-

*"**43.** This Court in Dicitex Furnishing [Oriental Insurance Co. Ltd. v. Dicitex Furnishing Ltd., (2020) 4 SCC 621 : (2020) 3 SCC (Civ) 202] upheld the concept of economic duress and held that notwithstanding signing of discharge voucher and accepting the amount offered, the dispute is still arbitrable. Pleading in a Section 11(6) application cannot be conclusive whether there is fraud, coercion or undue influence or otherwise.*

***44.** A three-Judge Bench of this Court in SBI General Insurance Co. Ltd. v. Krish Spg.[SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : (2025) 3 SCC (Civ) 567] held that even if the contracting parties*





in pursuance to a settlement agree to discharge each other of any obligations arising under the contract it is does not ipso facto mean that the arbitration agreement too would come to an end, unless the parties expressly agree to do the same. The Bench also explained the concept of "accord and satisfaction" under Section 63 of the Contract Act, 1872.

45. *Any dispute pertaining to the full and final settlement itself by necessary implication being a dispute arising out of or in relation to or under the substantive contract would not be precluded from reference to arbitration as the arbitration agreement contained in the original contract continues to be in existence even after the parties have discharged the original contract by "accord and satisfaction". This Court held thus: (Krish Spg. case [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : (2025) 3 SCC (Civ) 567] , SCC p. 31, paras 55-56)*

> *"55. Thus, even if the contracting parties, in pursuance of a settlement, agree to discharge each other of any obligations arising under the contract, this does not ipso facto mean that the arbitration agreement too would come to an end, unless the parties expressly agree to do the same. The intention of the parties in discharging a contract by "accord and satisfaction" is to relieve each other of the existing or any new obligations under the contract. Such a discharge of obligations under the substantive contract cannot be construed to mean that the parties also intended to relieve each other of their obligation to settle any dispute pertaining to the original contract through arbitration.*
>
> *56. Although ordinarily no arbitrable disputes may subsist after execution of a full and final settlement, yet any dispute pertaining to the full and final settlement itself, by necessary implication being a dispute arising out of or in relation to or under the substantive contract, would not be precluded from reference to arbitration as the arbitration agreement contained in the original contract continues to be in existence even after the parties have discharged the original contract by "accord and satisfaction"."*
>
> *(emphasis in original)*

46. *Again, in Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd. [Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd., (2025) 1 SCC 502 : (2025) 1 SCC (Civ) 298] , a three-Judge Bench of this Court reiterated the above proposition and held as under: (SCC p. 519, paras 51-52)*

> *"51. It is now well-settled law that, at the stage of Section 11 application, the referral courts need only to examine whether the arbitration agreement exists — nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of*

such a limited scope of judicial interference of the referral courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process. This is especially possible in instances, including but not limited to, where the claimant canvasses either ex facie time-barred claims or claims which have been discharged through "accord and satisfaction", or cases where the impleadment of a non-signatory to the arbitration agreement is sought, etc.

52. In order to balance such a limited scope of judicial interference with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration."

***47.** Thus, the doctrine of Kompetenz-Kompetenz is now firmly embedded in the arbitration jurisprudence in India. This doctrine is based on the principle that an Arbitral Tribunal is competent to rule on its own jurisdiction including on the issue of existence or validity of an arbitration agreement. The object is to minimise judicial intervention which is an acknowledgment of the concept of party autonomy.*

***48.** In view of the clear legal proposition, we have no hesitation in holding that the High Court was wrong in rejecting the Section 11(6) applications of the appellant. The question as to whether the appellant was compelled to sign the standardized voucher/advance receipt forwarded to it by the respondent out of economic duress and whether notwithstanding receipt of Rs 1,88,14,146 as against the claim of Rs 5,71,69,554 the claim to arbitration is sustainable or not are clearly within the domain of the Arbitral Tribunal."*

8. Since the existence of arbitration clause is not disputed, this Court finds no impediment in appointment of an Arbitrator. Accordingly, this petition is allowed, appointing Justice (Retd.) Rekha Palli, former Judge of this Court (Mobile No. 9810012120) as the Sole Arbitrator to adjudicate the disputes between the parties. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre ('DIAC') and fee of the Arbitrator shall be fixed as per fee schedule under DIAC (Administrative Cost & Arbitrators' Fees) Rules 2018.

9. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference. It will be open to the Respondent to raise the objection of the alleged accord and satisfaction before the Arbitral Tribunal and if and when raised, the same shall be decided in accordance with law.

10. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open.

11. It will be open to the Respondent to file counter claim, if any.

12. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

OCTOBER 5, 2026/AK

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