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

Reserved on: 11th May. 2026
Pronounced on: 01st July, 2026

\+ ARB.P. 171/2026

M/S SUPPLY CHAIN SOLUTIONS PVT. LTD. .....Petitioner

Through: Ms. Swati Surbhi with Mr. Gaurav Bhardwaj, Mr. Deepak Shukla, Ms. Radhika Choubey and Ms. Geetu Bishnoi, Advocates.
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versus

M/S PRIME TRANS EXPRESS PVT. LTD .....Respondent

Through: Mr. Shaurya Mittal with Ms. Dhanya Visweswaran, Advocates.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") praying, *inter alia*, for appointment of a Sole Arbitrator for adjudication of disputes arising between the parties out of the Carriage of Goods Agreement ("**Agreement**") dated 01st June, 2015.

2. The petitioner herein, is a private limited company engaged in the business of supply chain management. As per the facts on record, the

petitioner entered into the Agreement dated 01st June, 2015 with the respondent for availing transportation services. As per the terms of the Agreement, the respondent had agreed to provide vehicles for transportation of goods and consignments of the customers of the petitioner, against the consideration of carriage charge as mentioned in *Schedule-A* of the Agreement. The Agreement was initially valid till 31st May, 2016 and thereafter, was renewed *vide* an addendum dated 01st June, 2016, for a further period of 12 months, i.e., till 31st May, 2017.

3. Clause 17 of the Agreement provides that, in case of delay in delivery by the respondent, the respondent shall provide the petitioner with a credit against future amount payable under the Agreement. The Clause further states that, in case of delay up to 2 days, the debit shall be calculated at Rs. 1000/- per day, and in case of delay of more than three days, the debit shall be calculated at Rs. 2000/- per day.

4. As per the petition, a consignment containing ceiling fans ("**Shipment**") worth Rs. 38,00,000/-, which was to be carried by the respondent from *Village Mohri, District Kurukshetra* to *Ahmedabad* was illegally detained in *Panchkula,* at the office of the respondent from 26th August, 2016 till 27th September, 2016. In view of this detainment, the petitioner claims an entitlement to levy a penalty amounting to Rs. 1,64,700/- on the respondent, in terms of Clause 17 of the Agreement.

5. The petition further avers that the parties signed a Minutes of Meeting ("**MoM**") dated 06th September, 2016, wherein, it was agreed that the petitioner shall pay an amount of Rs. 12,41,500/- to the respondent, who shall release the detained Shipment. However, despite paying the full agreed

amount by 12th September, 2016, the respondent continued to detain the shipment.

6. Thus, it is the case of the petitioner that due to the non-performance of the contractual obligations by the respondent, and on account of sporadic delivery of consignment, the petitioner has sought compensation amounting to Rs. 12,61,100/- towards damages, illegal payment and delay in consignment. Further, the petitioner also seeks to levy additional interest on the delay, at the rate of 18% per annum on the principal amount of Rs. 12,61,100/-, in view of the losses and shortage of funds suffered by them, due to the detained Shipment.

7. The petitioner further contends that they sent a notice on 14th September, 2016 to the respondent, invoking arbitration under Clause 28 of the Agreement, and appointed a Sole Arbitrator to adjudicate the disputes. The parties participated in the arbitration proceedings, and an Arbitral Award ("**Award**") was pronounced on 08th December, 2017.

8. However, the respondent filed a petition under Section 34 of the Arbitration Act before the Patiala House Courts, seeking setting aside of the Award. The said Court *vide* judgment dated 22nd July, 2025 in *ARBTN 715/2018*, titled as *"M/s Prime Trans Express Pvt. Ltd. Versus M/s SS Supply Chain Solutions Pvt. Ltd. and Another"*, allowed the petition and set aside the Award on grounds of being without jurisdiction, as the Sole Arbitrator had been appointed unilaterally by the petitioner.

9. In view of the aforesaid, the petitioner again invoked the Arbitration Clause, i.e., Clause 28 of the Agreement, *vide* notice dated 25th August, 2025, in terms of Section 21 of the Arbitration Act. However, the respondent

did not furnish any reply to the said notice. Therefore, the present petition has been filed.

10. *Per contra*, learned counsel for the respondent has opposed the present petition on multiple grounds. However, before proceeding to the submissions made by the respondent, this Court notes that on the hearing dated 14th April, 2026, learned counsel for the respondent had submitted before this Court that they do not seek to contend the question of limitation.

11. It is the case of the respondent that the dispute between the parties with respect to the detained Shipment already stands settled, and the petitioner has suppressed material facts in this regard. Under the MoM, it had been agreed between the parties that the petitioner shall pay an amount of Rs. 12,41,500/- by 07th September, 2016, and the respondent shall release the consignment. However, the petitioner defaulted in paying the agreed amount by 07th September, 2016, and instead, paid the amount belatedly on 12th September, 2016. Immediately thereafter, all but one consignment was released by the respondent, on account of making good the cost incurred by the respondent in keeping the goods for a longer duration.

12. Subsequently, the petitioner filed a complaint at the Police Station in *Panchkula.* In view of the police complaint, the parties once again entered into a Settlement Agreement dated 27th September, 2016, before the Station House Officer (**"SHO"**) of the Police Station in *Panchkula*. Under the said Settlement Agreement, the petitioner promised to pay an additional sum of Rs. 30,000/- to the respondent, for the release of the withheld consignment. As per the respondent, the dispute between the parties has been fully and finally settled by way of the Settlement Agreement, which constituted an extension to the MoM dated 06th September, 2016. The MoM did not

expressly record any arbitration agreement between the parties, and rather provided that parties are no longer entitled to initiate any legal proceedings against each other, with respect to the entire contract period. This clearly excludes any intention of the parties to arbitrate the disputes between them. Thus, there is no occasion for the petitioner to invoke arbitration under the aforementioned Agreement.

13. Learned counsel for the respondent has further submitted that the MoM constituted a full and final settlement between the parties. The MoM superseded and substituted the Agreement between the parties, and novated the Agreement within the meaning of Section 62 of the Indian Contract Act, 1872 ("**Contract Act**"). Since the Arbitration Clause contained in the Agreement was not expressly preserved under the MoM, the same does not survive, and cannot be invoked in relation to disputes arising post-settlement.

14. He further submitted that the MoM executed between the parties did not amount to a modification of the Agreement between the parties, as the MoM was neither described as an amendment to the Agreement, nor was it annexed as a part thereof, in terms of Clause 28.3 of the Agreement. Further, the MoM did not state that the Arbitration Clause in the Agreement, or any other clause therein, would continue to govern any issues that may arise between the parties. Thus, the parties treated the MoM as a standalone document which resolved the disputes between the parties, independently and in substitution of the Agreement. Accordingly, the Arbitration Clause in the Agreement cannot be read into the MoM, by means of implication.

15. Without prejudice to the submission with respect to novation, learned counsel for the respondent submitted that the MoM is an independent

contract, which does not contain any Arbitration Clause. The claim raised by the petitioner arises out of an alleged breach of the MoM, and the same cannot be brought within the scope of the Arbitration Clause under the Agreement.

16. This Court has heard the learned counsels for the parties and perused the material on record.

17. The core question requiring adjudication by this Court is as to whether the disputes that the petitioner seeks to refer to arbitration already stand resolved by way of a 'full and final settlement' between the parties, in the form of the MoM dated 06th September, 2016 read with the Settlement Agreement dated 27th September, 2016.

18. At the outset, it is noted that in the present case, the Arbitration Clause as contained in Clause 28 of the Agreement dated 01st June, 2015, reads as under:

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28. Any legal action pertaining to this Agreement shall be subject to the jurisdiction of courts at New Delhi alone to the other exclusion of other courts.

That in the event of any disputes or differences arising out of, relating to or with reference to or in connection with this Agreement shall be resolved through mutual discussion. If the dispute is not resolved through discussion within a period of one month from the date of raising of dispute then it shall be referred to arbitration consisting of arbitrators appointed by Second Party, whose award shall be final and binding on the parties The venue of arbitration shall be at Delhi and the arbitration proceedings shall be in accordance with the Arbitration & Conciliation Act, 1996 or any statutory enactment thereof.

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19. Perusal of the aforesaid Arbitration Clause shows that in the event of any disputes, the parties shall first attempt to resolve the issues through mutual discussions, failing which the dispute shall be referred to arbitration.

20. As per the facts on record, a dispute arose between the parties when the Shipment of the petitioner was detained by the respondent from 26th August, 2016 till 27th September, 2016. To release the said Shipment, the parties executed the MoM dated 06th September, 2016, whereby, the petitioner agreed to pay Rs. 12,41,500/- on account of the respondent releasing the said shipment. Admittedly, the petitioner paid the entire agreed amount by 12th September, 2016. However, the respondent released all but one consignment, in order to recover the cost that had been incurred in keeping the goods for a duration longer than that agreed under the MoM.

21. Further, the respondent has brought on record a Settlement Agreement entered on 27th September, 2016, whereby, the petitioner agreed to pay another sum of Rs. 30,000/- to the respondent, for release of the pending consignment.

22. This Court notes that the present petition has been filed by the petitioner to refer certain disputes to arbitration, i.e., disputes *qua* willful breach of the payment obligation on part of the respondent, and the losses and shortages of fund suffered by the petitioner due to the detained Shipment. The petitioner has raised a claim amount of Rs. 12,61,100/- towards damages, illegal payments and towards delay in consignment, along with interest at the rate of 18% per annum. On the other hand, the respondent has denied any willful breach of payment obligations on their part.

23. As regards the contention of the respondent, that the dispute between the parties stands settled by way of the MoM and the Settlement Agreement, and that the parties are no longer entitled to initiate any legal proceedings against each other, this Court is of the view that a determination of whether

or not matters as between the parties stood finally resolved, would require this Court to enter into an inquiry on the factual matrix, as well as a consideration of the terms of the Agreement, MoM and the Settlement Agreement.

24. Considering the aforesaid facts and circumstances of the case, it is clear that since the petitioner has raised disputes with respect to breach of the payment obligations by the respondent under the Agreement, as well as illegal payments, damages and delay in consignment, it cannot be said that *ex facie* there exist no disputes between the parties, or that the disputes between the parties stand resolved.

25. Law is well settled that the scope of inquiry for a Referral Court at the stage of deciding a petition under Section 11(6) of the Arbitration Act, is limited to the scrutiny of *prima facie* existence of the arbitration agreement. The question of "accord and satisfaction", being a mixed question of law and fact, comes within the exclusive jurisdiction of the Arbitral Tribunal, and cannot be enquired into by this Court, at this stage.

26. The Supreme Court in the case of ***SBI General Insurance Company Limited Versus Krish Spinning, (2024) 12 SCC 1,*** authoritatively delineated the scope of judicial intervention at the stage of Section 11 of the Arbitration Act. Thus, holding that various questions like "accord and satisfaction" are mixed questions of law and fact, and come within the exclusive jurisdiction of the Arbitral Tribunal, the Supreme Court in the aforesaid case, held as follows:

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> *"**(c) judicial interference under the 1996 Act***
> ***110.** The parties have been conferred with the power to decide and agree on the procedure to be adopted for appointing arbitrators. In*

cases where the agreed upon procedure fails, the courts have been vested with the power to appoint arbitrators upon the request of a party, to resolve the deadlock between the parties in appointing the arbitrators.

111. Section 11 of the 1996 Act 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. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] and affirmed in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] that Sections 8 and 11, respectively, of the 1996 Act 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.

112. *The difference between Sections 8 and 11, respectively, of the 1996 Act is also evident from the scope of these provisions. Some of these differences are:*

112.1. *While Section 8 empowers any "judicial authority" to refer the parties to arbitration, under Section 11, the power to refer has been exclusively conferred upon the High Court and the Supreme Court.*

112.2. *Under Section 37, an appeal lies against the refusal of the judicial authority to refer the parties to arbitration, whereas no such provision for appeal exists for a refusal under Section 11.*

112.3. The standard of scrutiny provided under Section 8 is that of prima facie examination of the validity and existence of an arbitration agreement. Whereas, the standard of scrutiny under Section 11 is confined to the examination of the existence of the arbitration agreement.

112.4. *During the pendency of an application under Section 8, arbitration may commence or continue and an award can be passed. On the other hand, under Section 11, once there is failure on the part of the parties in appointing the arbitrator as per the agreed procedure and an application is preferred, no arbitration proceedings can commence or continue.*

113. 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.

114. 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.

115. The aforesaid approach serves a twofold 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.

116. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed 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] 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: (SCC p. 104, para 220)*

> ***"220. 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 [Ed.: The words between two asterisks have been emphasised in original as well.] not other issues [Ed.: The words between two asterisks have been emphasised in original as well.] ". 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 time-bound 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)

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]

118. 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".

119. 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.

120. 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 does not 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 principle 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.

121. Tests like the "eye of the needle" and "ex facie meritless", although try to minimise the extent of judicial interference, yet they require the Referral Court to examine contested facts and appreciate prima facie evidence (however limited the scope of enquiry may be) and thus are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal.

122. *Appointment of an Arbitral Tribunal at the stage of Section 11 petition also does not mean that the Referral Courts forego any scope of judicial review of the adjudication done by the Arbitral Tribunal. The 1996 Act clearly vests the national courts with the power of subsequent review by which the award passed by an arbitrator may be subjected to challenge by any of the parties to the arbitration.*

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126. The power available to the Referral Courts has to be construed in the light of the fact that no right to appeal is available against any

order passed by the Referral Court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the Arbitral Tribunal at the nascent stage of Section 11, the Referral Courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected.

127. *Section 11 also envisages a time-bound and expeditious disposal of the application for appointment of arbitrator. One of the reasons for this is also the fact that unlike Section 8, once an application under Section 11 is filed, arbitration cannot commence until the Arbitral Tribunal is constituted by the Referral Court. This Court, on various occasions, has given directions to the High Courts for expeditious disposal of pending Section 11 applications. It has also directed the litigating parties to refrain from filing bulky pleadings in matters pertaining to Section 11****. Seen thus, if the Referral Courts go into the details of issues pertaining to "accord and satisfaction" and the like, then it would become rather difficult to achieve the objective of expediency and simplification of pleadings.***

128. We are also of the view that ex facie frivolity and dishonesty in litigation is an aspect which the Arbitral Tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the Arbitral Tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the Referral Court. If the Referral Court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the Arbitral Tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material."

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(Emphasis supplied)

27. Accordingly, considering the established law regarding the jurisdiction of the Court while adjudicating at the stage of Section 11 of the Arbitration Act, the contention of the respondent that the dispute stood settled by way of the MoM and the Settlement Agreement, does not pertain

to the existence of the Arbitration Agreement, and falls within the scope of adjudication by the Arbitral Tribunal.

28. It is only in very limited category of cases, where there is not even a vestige of doubt that the claim is *ex-facie* time-barred, or that the dispute is non-arbitrable, that the Court may decline to make the reference. However, if there is even the slightest doubt, the rule is to refer the disputes to arbitration, otherwise it would encroach upon what is essentially a matter to be determined by the Arbitral Tribunal. (see: ***para 47, Bharat Sanchar Nigam Limited and Another versus Nortel Networks India Private Limited, (2021) 5 SCC 738***)

29. The next issue arising for consideration before this Court is whether the MoM or the Settlement Agreement between the parties novated the Agreement and the Arbitration Clause.

30. The counsel for the respondent submitted that the MoM read with the Settlement Agreement, novated the Agreement within the ambit of Section 62 of the Contract Act. As per his submission, the MoM is construed as an independent contract that superseded the Agreement. Since the MoM did not contain any arbitration clause, therefore, arbitration cannot be invoked under Clause 28 of the Agreement, since the said Clause stands extinguished.

31. As noted hereinabove, the jurisdiction of the Referral Court while dealing with a petition under Section 11 of the Arbitration Act is limited to a *prima facie* examination of the validity of an arbitration clause. In the present case, it is *prima facie* evident that there exists an Arbitration Clause, being Clause 28 of the Agreement dated 01st June, 2015. Whether the Agreement dated 01st June, 2015 has been novated by the MoM and the Settlement Agreement, requires a detailed consideration of the covenants of

the three agreements, along with the surrounding circumstances in which these agreements were entered into, to examine the intention of the parties. Such an exercise cannot be done under the limited jurisdiction of a Referral Court under Section 11 of the Arbitration Act, and is purely a question that falls within the domain of the Arbitrator.

32. In this regard, it would be apposite to take note of the decision in the case of ***Sanjiv Prakash Versus Seema Kukreja and Others, (2021) 9 SCC 732***, wherein, the Supreme Court held that the question whether an agreement containing an arbitration clause has been novated by another agreement, cannot be adjudicated at the time of considering a petition under Section 11, by way of conducting a mini trial or elaborate review of the facts and law, which would usurp the jurisdiction of the Arbitral Tribunal, in the following manner:

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> ***22. Judged by the aforesaid tests, it is obvious that whether the MoU has been novated by the SHA dated 12-4-1996 requires a detailed consideration of the clauses of the two agreements, together with the surrounding circumstances in which these agreements were entered into, and a full consideration of the law on the subject. None of this can be done given the limited jurisdiction of a court under Section 11 of the 1996 Act. As has been held in para 148 of Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1: (2021) 1 SCC (Civ) 549] , detailed arguments on whether an agreement which contains an arbitration clause has or has not been novated cannot possibly be decided in exercise of a limited prima facie review as to whether an arbitration agreement exists between the parties.*** *Also, this case does not fall within the category of cases which ousts arbitration altogether, such as matters which are in rem proceedings or cases which, without doubt, concern minors, lunatics or other persons incompetent to contract. There is nothing vexatious or frivolous in the plea taken by the appellant. On the contrary, a Section 11 court would refer the matter when contentions relating to*

non-arbitrability are plainly arguable, or when facts are contested. The court cannot, at this stage, enter into a mini trial or elaborate review of the facts and law which would usurp the jurisdiction of the Arbitral Tribunal.
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(Emphasis Supplied)

33. Further, the Court in the case of ***Benetton India Pvt. Ltd. Versus Gini and Jony Ltd. (2026) SCC OnLine Del 773***, held in clear terms that questions relating to novation or substitution of an earlier agreement by any subsequent agreement ordinarily involve disputed questions of fact and mixed questions of fact and law. Such issues are intrinsically connected with the merits of the dispute and require appreciation of evidence, examination of contractual intent of the parties and consideration of surrounding circumstances. Since such matters fall within the domain of the Arbitral Tribunal, the Referral Court while exercising powers under Section 11 of the Arbitration Act, cannot embark upon a detailed enquiry in this regard. Such questions are to be left open for determination by the Arbitral Tribunal. Thus, it was held as under:

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27. A perusal of the aforesaid judgments delineates the settled and contemporary position of law governing the scope of jurisdiction under Section 11 of the 1996 Act. The referral Court, at the pre-reference stage, is required to undertake only a prima facie examination with respect to the existence of an arbitration agreement. The legislative mandate, particularly post the insertion of Section 11(6A) of the 1996 Act, confines the scrutiny of the Court to ascertaining whether an arbitration agreement exists between the parties; it does not extend to an in-depth adjudication of issues touching upon the issue of novation, as relevant in the present case, of the underlying contract.

28. It is well settled in law that questions relating to novation or substitution of an earlier agreement by any subsequent agreement(s) ordinarily involve disputed questions of fact and mixed questions of fact and law. Such issues are intrinsically connected with the merits

of the dispute and require appreciation of evidence, examination of contractual intent of the parties, and consideration of surrounding circumstances. These are matters which fall squarely within the domain of the Arbitrator in view of the doctrine of kompetenz-kompetenz. The referral Court, while exercising powers under Section 11 of the 1996 Act, cannot embark upon a detailed enquiry akin to a trial or conduct what would effectively amount to a "mini trial" on the question whether the original contract stands novated or extinguished. To do so would be to transgress the limited jurisdiction conferred at the pre-reference stage. Once a prima facie arbitration agreement is shown to exist, and the plea of novation or supersession is not ex facie established so as to render the arbitration clause nonexistent, such objections are required to be left open for determination by the Arbitrator.

29. In the present case, prima facie it is evident that there exists an arbitration clause being Clause No. 10. (j) of the DA. The subsequent Agreements i.e. SA I, SA II and SA III were only entered into on the limited aspect of restructuring of payment obligation of the respondent. Whether the said SAs will supersede the original DA and the original DA would stand novated is purely a question that falls within the domain of the Arbitrator as it requires the Court to examine the unequivocal intention of the parties to novate the terms under the original DA. *It would also require the Court to examine whether the original DA survives after the alteration of terms of the agreement with respect to payment. A court under Section 11 of the 1996 Act is bound by the statutory restrictions and thus cannot transgress into the merits of the case.*

30. The judgment of Kishorilal Gupta & Bros (Supra) and Young Achievers (Supra) has been considered by the Hon'ble Supreme Court in Sanjiv Prakash (Supra) and the law laid down is clear that at the stage of Section 11 of the 1996 Act cannot examine the question of novation of Contract, thus, does not help the case of the respondent.

31. In my considered view, the reliance placed by the respondent on B.L. Kashyap (Supra), L&T Ltd. (Supra), and Zhuhai Hansen Technology Co. Ltd. (Supra), is also misplaced. None of the aforesaid decisions were rendered in the context of proceedings under Section 11 of the 1996 Act. In particular, B.L. Kashyap (Supra) arose at the stage of challenge under Section 34 of the 1996 Act, where the Arbitral Award had already been rendered and the issue of novation had been duly examined and adjudicated upon by the Arbitrator. The scope of judicial scrutiny under Section 34 of the 1996 Act, which lays down grounds to challenge an Award, stands on an entirely different footing from the limited and prima facie

examination contemplated under Section 11. Similarly, the principles enunciated in L&T Ltd. (Supra) and Zhuhai Hansen Technology Co. Ltd. (Supra) cannot be mechanically applied at the referral stage under Section 11 of the 1996 Act, where this Court is confined to examining the existence of an arbitration agreement and is not required, nor permitted, to enter into a detailed examination of contentious issues on merits. At this juncture, the Court cannot adjudicate upon the substantive plea of novation.

32. *Whether by mutual consent, the parties have consciously and expressly substituted the earlier dispute resolution mechanism from the arbitral mechanism and conferred exclusive jurisdiction upon civil court is also a question of fact that is to be examined by the Arbitrator.* ***It is a well settled law that if the arbitration agreement is contained in a single undisputed document, the referral court need not conduct a mini trial, rather only a prima facie proof is required to establish the existence of the Arbitration Agreement on the touchstone of Section 7 of the 1996 Act. The undisputed DA, from which the payment obligation flows, contains an arbitration clause which satisfies the requirements as envisaged under Section 7 of the 1996 Act. Therefore, whether any deviation is made from the consensus ad idem of the parties to refer the disputes to Arbitration shall also be considered by the Arbitrator.***

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(Emphasis Supplied)

34. The reliance placed by the respondent on the decision in the case of ***Young Achievers Versus IMS Learning Resources Pvt. Ltd., (2013) 10 SCC 535***, would be of no aid to the respondent, as the said decision was pronounced in the context of Section 8 of the Arbitration Act, which has a much different scope than Section 11 of the Arbitration Act, under which the present petition has been filed. Further, even otherwise, the decision in the case of ***Young Achievers (Supra)*** was considered by the Supreme Court in the case of ***Sanjiv Prakash (Supra)***, wherein, the Supreme Court held that issues relating to novation of an agreement would require a detailed consideration of the clauses of the agreements, together with the surrounding circumstances in which said agreements were entered into. The Supreme

Court categorically held that such a detailed consideration with regard to the issue of novation of an earlier agreement between the parties, cannot be decided by the Referral Court in exercise of its limited jurisdiction under Section 11 of the Arbitration Act.

35. In view of the aforesaid detailed discussion, it is clear that the scope of this Court's jurisdiction under Section 11 of the Act is extremely circumscribed. All the contentions as sought to be raised by the respondent are matters which are to be determined by the Arbitral Tribunal, and the Court at this stage is not required to conduct any intricate enquiry into the various contentious issues, as raised before it.

36. Thus, considering the aforesaid, the dispute between the parties is referred to an Arbitral Tribunal, comprising of a Sole Arbitrator.

37. Accordingly, the following directions are issued in this regard:

i. Ms. Alka Chawla, Former Professor-In-charge, Campus Law Centre, University of Delhi, (Mobile No. +91-9953762025) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii. The remuneration of the Arbitrator shall be in terms of Schedule IV of the Arbitration Act.

iii. The Sole Arbitrator is requested to furnish a declaration in terms of Section 12 of the Arbitration Act prior to entering into the reference. In the event there is any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application before this Court.

iv. It shall be open to the respondent to raise counter-claims, if any, in arbitration proceedings.

v. The parties shall approach the Arbitrator within two (2) weeks, from today.

vi. It is made clear that all the rights and contentions of the parties, including, the arbitrability of any of the claims and/or counter-claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator.

38. Needless to state, nothing in this order shall be construed as an expression of this Court on the merits of the case.

39. The present petition is disposed of in the aforesaid terms.

40. The Registry is directed to send a copy of this order to the learned Arbitrator, for information and compliance.

MINI PUSHKARNA
(JUDGE)

JULY 01, 2026
c