

ORDER SHEET
AP-COM/601/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

JPW INFRATECH PRIVATE LIMITED
VS
BRIDGE AND ROOF CO. (INDIA) LIMITED AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 11th August, 2025.

Appearance:

Mr. Shounak Mukhopadhyay, Adv.
Mr. Mrigank Kejriwal, Adv.
...for the petitioner.

Mr. Sanjib Dawn, Adv.
...for the respondents.

1. This is an application for appointment of a learned Arbitrator in terms of Clause 78 of the General Conditions of Contract (GCC) of the respondent no.1. Pursuant to a notice inviting e-tender dated May 13, 2022, the petitioner was awarded the work as the L1 bidder. A Letter of Intent dated July 26, 2022 was issued by the respondent no.3. The estimated value of the work was Rs.31,04,10,086.95/-. The petitioner furnished a performance bank guarantee (PBG) for a total sum of Rs.1,55,20,525/-.
2. According to the petitioner, men and machineries were deployed. However, there were multiple hindrances at the site which resulted in slow progress of

the work. The petitioner contends that the hindrances immensely affected the work and the respondents were responsible for the delay.

3. The respondents had engaged the petitioner as a sub-contractor, for execution of certain works allotted to the respondent by BALCO. Ultimately, disputes arose between the parties and the contract was foreclosed by the respondents.
4. The petitioner further contends to have executed the work till January 31, 2023 for an amount of Rs.2,75,90,899/-. However, the petitioner only received payment to the tune of Rs.30 lakhs. Thereafter, the petitioner received a further payment for an amount of Rs.1,25,00,000/-. According to the petitioner, substantial amount still stood outstanding and various letters were issued to the respondents. The petitioner requested the respondents for release of Rs.24,62,175/- towards retention and security deposit and for further release of the PBG amount, to the tune of Rs.1,55,20,505/-. The respondents demanded a no-dues certificate, to be signed by the petitioner as a pre-condition for the release of the PBG. The petitioner contends to have been facing a financial crunch and eventually was coerced into issuing the no-dues certificate in the format provided by the respondents. The PBG was released on July 3, 2024. Immediately, on July 4, 2024, a formal letter was issued to the respondent no.2 and the petitioner sought to withdraw the no-dues certificate on the plea that the issuance of the same by the petitioner, was under duress and coercion. The respondents had verbally threatened the petitioner that, if such no-dues certificate was not signed, the

PBG would not be released. The respondents did not reply to the said letter. By the said letter dated July 4, 2024, the petitioner also made a claim of around Rs.3 crores on account of unpaid dues. A similar demand was issued on November 14, 2024. The respondents did not reply to the letters. On March 6, 2025, the petitioner invoked arbitration in terms of clause 78 of the GCC.

5. It is pertinent to mention that the GCC was made applicable to the subject contract. The petitioner proposed the name of a retired Hon'ble Judge of Chattisgarh High Court as the sole arbitrator. The respondents replied to the letter invoking arbitration and denied that dues were payable. The respondents also stated that the no-dues certificate indicated that nothing was further payable by the respondents and there was no arbitrable dispute. Issuance of the no-due certificate was evidence of accord and satisfaction.
6. Mr. Dawn, Learned Advocate for the respondents submits that the application under section 11(6) of the Arbitration of the said Act is not maintainable, inasmuch as, the petitioner ought to have first approached the SCOPE Forum for conciliation in terms of clause 77 of the GCC. It is next contended that, only if the conciliation failed, the parties could seek arbitration, as per the SCOPE rules. Such conditions were agreed to by the petitioner. The referral court must uphold party autonomy. The agreed terms could not be varied or modified by the petitioner unilaterally, by approaching this Court for reference of the dispute to arbitration. He further submits that there was no foreclosure as alleged by the petitioner, or at all.

7. From the series of correspondence which have been mentioned hereinabove, the following facts emerge:-

- a) The petitioner is aggrieved by the action of the respondents in forcing the petitioner to sign a no-due certificate and in not paying the dues.
- b) The petitioner alleges force and coercion on the part of the respondents in obtaining the no-dues certificate.
- c) The petitioner revoked the no-due certificate by a letter dated July 4, 2024 and demanded payment of the outstanding dues, of more than Rs.3 crores.
- d) According to the respondents, nothing was due and payable and each and every penny claimed by the petitioner was under false and frivolous pretext. Rather, the respondents submit that pursuant to an amicable settlement, a sum of approximately Rs.1.26 crores had been paid to the petitioner, which persuaded the petitioner to issue the no-dues certificate. The allegations of coercion made by the petitioner were fabricated and an afterthought. That SCOPE Forum would be the only forum before which the parties could approach for adjudication of the dispute by arbitration. The respondents have a counter claim against the petitioner.
- e) The allegation of foreclosure is denied. The contract between BALCO and the respondents came to an end and automatically the contract between the respondents and the petitioner also terminated.

8. The above facts clearly indicate that there are live disputes, and an amicable settlement by conciliation, at this stage, is not possible. The nature of allegations made by the petitioner, the response of the respondents, factual disputes and allegations and counter-allegations do not inspire the Court to hold that there is any scope for conciliation at this stage. Moreover, clause 77 of the GCC, which is quoted below, provides that a party may refer the dispute for conciliation to the SCOPE Forum under the SFCA Rules.

“77.00 Resolution of Dispute through Conciliation :

Any party may refer the dispute for Conciliation under Rules of Conciliation and Arbitration under SCOPE Forum of Conciliation and Arbitration (SFCA), 2003 and amendments made thereto from time to time (hereinafter referred as “the Rules”) by making application to the Secretariat of the SCOPE Forum. The Party initiating conciliation shall send to the other party a written invitation to conciliate under the Rules, briefly identifying the subject matter of the dispute.

The settlement so rendered between the Parties in pursuance thereof shall be final and binding on the Parties. If the other party rejects the invitation, there will be no conciliation proceedings at all.”

9. Thus, settlement of dispute by conciliation is an option and not a mandate. Reference is made to decisions of ***Demerara Distilleries Private Limited and Anr. vs. Demerara Distillers Limited : (2015) 13 SCC 610*** and ***Visa International Limited vs. Continental Resources (USA) Limited : (2009) 2 SCC 5***, as well as ***order dated 5th March 2025 passed in AP/275/2022***

[G R Infrastructure Private Limited v. Bridge and Roof Company (India) Limited], in support of the contention that the series of communications between the parties clearly demonstrate that the parties did not display any intention to resolve the dispute. Had there been any scope for conciliation, the same would have been availed of long time back. The nature of the allegations and counter-allegations are such that, the same cannot be referred to conciliation.

10. The relevant portions of the decision **G R Infrastructure Private Limited (supra)** are quoted below:-

“5.This Court has considered the submissions of the respective parties. In the decision of **Visa International Ltd. v. Continental Resources (USA) Ltd.**, reported in **(2009) 2 SCC 55**, the Hon’ble Apex Court held that if the referral Court finds from the records that despite the parties communicating with each other, the dispute continued, relegating the parties to the process of conciliation and/or amicable settlement would be an empty formality. The relevant portion is quoted below:-

“38. It was contended that the pre-condition for amicable settlement of the dispute between the parties has not been exhausted and therefore the application seeking appointment of arbitrator is premature. From the correspondence exchanged between the parties at pp. 54-77 of the paper book, it is clear that there was no scope for amicable settlement, for both the parties have taken rigid stand making allegations against each other. In this regard a reference may be made to the letter dated 15-9-2006 from the respondent herein in which it is inter alia stated “... since February 2005 after the execution of the agreements, various meetings/discussions have taken place between both the parties for furtherance of the objective and purpose with which the agreement and the MoU were signed between the parties. Several correspondences have been made by CRL to VISA to help and support its endeavour for achieving the goal for which the abovementioned agreements were executed”. In the same letter it is alleged that in spite of repeated requests the petitioner has not provided any funding schedules for their portion of equity along with supporting documents to help in convincing OMC of financial capabilities of the parties and ultimately to obtain financial closure of the project. The exchange of letters between the parties undoubtedly discloses that attempts were made for

an amicable settlement but without any result leaving no option but to invoke the arbitration clause.”

6. In the foregoing paragraphs, this Court has already enumerated the number of letters that the petitioner wrote and the response to those letters by the respondent. Thus, relegating the petitioner to further conciliation, will be a sheer wastage of time which will lead to no fruitful result.

7. Under such circumstances, this Court is of the view that the application should be allowed, leaving all the issues with regard to arbitrability of the dispute, limitation, the admissibility of the claim of the petitioner and any other objection that the respondent may have against the petitioner, open and to be raised before the learned arbitrator. The learned arbitrator shall decide the entire matter in accordance with law, without being influenced by the observations made hereinabove.”

11. In the decision of ***Visa International (supra)*** the Hon’ble Apex Court held as follows:-

“38. It was contended that the pre-condition for amicable settlement of the dispute between the parties has not been exhausted and therefore the application seeking appointment of arbitrator is premature. From the correspondence exchanged between the parties at pp. 54-77 of the paper book, it is clear that there was no scope for amicable settlement, for both the parties have taken rigid stand making allegations against each other. In this regard a reference may be made to the letter dated 15-9-2006 from the respondent herein in which it is inter alia stated “... since February 2005 after the execution of the agreements, various meetings/discussions have taken place between both the parties for furtherance of the objective and purpose with which the agreement and the MoU were signed between the parties. Several correspondences have been made by CRL to VISA to help and support its endeavour for achieving the goal for which the abovementioned agreements were executed”. In the same letter it is alleged that in spite of repeated requests the petitioner has not provided any funding schedules for their portion of equity along with supporting documents to help in convincing OMC of financial capabilities of the parties and ultimately to obtain financial closure of the project. The exchange of letters between the parties undoubtedly discloses that attempts were made for an amicable settlement but without any result leaving no option but to invoke the arbitration clause.”

12. In the decision of ***Demerara Distilleries Private Limited and Another v. Demerar Distillers Limited*** reported in **(2015)13 SCC 610**, the Hon'ble Apex Court held as follows:-

“5. Of the various contentions advanced by the respondent Company to resist the prayer for appointment of an arbitrator under Section 11(6) of the Act, the objections with regard the application being premature; the disputes not being arbitrable, and the proceedings pending before the Company Law Board, would not merit any serious consideration. The elaborate correspondence by and between the parties, as brought on record of the present proceeding, would indicate that any attempt, at this stage, to resolve the disputes by mutual discussions and mediation would be an empty formality. The proceedings before the Company Law Board at the instance of the present respondent and the prayer of the petitioners therein for reference to arbitration cannot logically and reasonably be construed to be a bar to the entertainment of the present application. Admittedly, a dispute has occurred with regard to the commitments of the respondent Company as regards equity participation and dissemination of technology as visualised under the Agreement. It would, therefore, be difficult to hold that the same would not be arbitrable, if otherwise, the arbitration clause can be legitimately invoked. Therefore, it is the objection of the respondent Company that the present petition is not maintainable at the instance of the petitioners which alone would require an in-depth consideration.”

13. With regard to applicability of clause 78 of GCC, which is quoted below, this Court finds that reference of the dispute to SCOPE Forum for arbitration is also an option.

“78.00 Resolution of Dispute through Arbitration :

In case the dispute is not settled by conciliation within 30 days of the initiation of conciliation or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by Arbitration, in accordance with the Rules of Arbitration of SCOPE Forum of Conciliation and Arbitration, 2003 and amendments made thereto from time to time.

The entire proceedings of Arbitration shall be governed under the Arbitration and Conciliation Act, 1996.

The venue of Arbitration shall be mutually decided by the Parties.

In case the Parties do not agree for resolution of dispute through Conciliation and Arbitration by the above-mentioned SCOPE Forum, the disputing Party shall opt for stipulated rules laid down under the Arbitration and Conciliation Act, 1996.

The Contract and the Parties therein shall be governed under the jurisdiction of Calcutta High Court.”

14. Clause 78 provides that in case the parties do not agree for resolution of the dispute through conciliation by the SCOPE Forum, the disputing party shall opt for the stipulated rule laid down under the Arbitration and Conciliation Act, 1996. The contract and the parties therein shall be governed by the jurisdiction of the Calcutta High Court. This provision clearly indicates that approaching the SCOPE Forum for reference of the dispute to arbitration and/or for constitution of an arbitral tribunal is again an option which the parties may or may not avail of or may or may not agree to. The party can approach SCOPE Forum for arbitration if the disputes are not settled by the SCOPE Forum in the conciliation proceeding within 30 days from reference or within such extended time as agreed between the parties.
15. Under such circumstances, when, from the very beginning the petitioner refused to approach SCOPE Forum, it is evident that the mechanism as provided under clause 78 of GCC for approaching SCOPE Forum has failed

and as such, the respondents cannot unilaterally avail of such provision by seeking dismissal of this application and relegating the parties to the SCOPE Forum. Thus, this application is maintainable before this court.

16. In the decision of **Goqii Technologies Private Limited v. Sokrati Technologies Private Limited** reported in **(2025) 2 SCC 192**, the Hon'ble Apex Court was of the view that the issue relating to accord and satisfaction should be decided by the learned arbitrator, as the scope of enquiry under Section 11 of the Arbitration and Conciliation Act, 1996 was limited to ascertaining only a prima facie existence of the arbitration agreement. The relevant portion of the judgment is quoted below:-

“17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the short question that falls for our consideration is whether the High Court committed any error in dismissing the appellant's application under Section 11 of the 1996 Act.

18. In a recent pronouncement, relying on the Constitution Bench judgment of this Court in *Interplay Between Arbitration Agreement under A & C Act, 1996 & Stamp Act, 1899, In re, this Court in SBI General Insurance Co. Ltd. v. Krish Spg.*, summarized the law on the scope and standard of judicial scrutiny that an application under Section 11(6) of the 1996 Act can be subjected to. The relevant parts are produced hereinbelow: (*Krish Spg. Case, SCC paras 117 & 128*)

“117. In view of the observations made by this Court in *Interplay Between Arbitration Agreement under A & C Act, 1996 & Stamp Act, 1899, In re*, 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* and adopted in *NTPC Ltd. v. SPML Infra Ltd.* 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 Agreement under A & C Act, 1996 & Stamp Act, 1899, In re.*

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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, within the benefit of extensive pleadings and evidentiary material.”

19. The scope of enquiry under Section 11 of the 1996 Act is limited to ascertaining the prima facie existence of an arbitration agreement. In the present case, the High Court exceeded this limited scope by undertaking a detailed examination of the factual matrix. The High Court erroneously proceeded to assess the auditor’s report in detail and dismissed the arbitration application. In our view, such an approach does not give effect to the legislative intent behind the 2015 Amendment to the 1996 Act which limited the judicial scrutiny at the stage of Section 11 solely to the prima facie determination of the existence of an arbitration agreement.”

17. The Hon'ble Apex Court has elaborately discussed the law relating to accord and satisfaction in various decisions.
18. In my view, 'accord and satisfaction' is a matter of evidence and when there is an allegation by the petitioner that the petitioner was forced to sign the no-dues certificate as a pre-condition for release of the PBG, this issue has to be proved by evidence. To prove the contrary, the respondents also need to adduce evidence. Under such circumstances, the question of accord and satisfaction is also within the domain of the learned arbitrator.
19. The Hon'ble Apex Court has also held that if it was found that a party had been unnecessarily dragged into a prolonged arbitration proceeding for adjudication of a non-arbitrable issue, the arbitrator also has the jurisdiction to award costs to such party.
20. Under such circumstances, as a referral court, being conscious of the limited scope of enquiry in this proceeding, I allow this application. The issues raised by Mr. Dawn with regard to accord and satisfaction, arbitrability of the dispute, inadmissibility of the claims, limitation etc. shall be decided by the learned Arbitrator.
21. Under such circumstances, the application is disposed of. This Court appoints Mr. Kumar Gupta, [Mob. No. 9830243523] learned Advocate, Bar Library Club, as the learned arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix

his/her remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

22. All the observations hereinabove are prima facie for adjudication of this application and the learned arbitrator shall proceed independently.

(SHAMPA SARKAR, J.)