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

Judgment reserved on:10.11.2025
Judgment pronounced on:26 .02.2026

\+ **ARB. P. 1035/2024**

BENETTON INDIA PVT LTD ....Petitioner

Through: Mr. Vinam Gupta, Ms. Pragya Narayan, Ms. Nabam Yama, Advs.

versus

GINI AND JONY LTD ....Respondent

Through: Ms. Renuka Sahu, Mr. Shivam Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("***1996 Act***"), seeking directions for the appointment of a Sole Arbitrator for adjudication of disputes between the parties arising out of a Distribution Agreement dated 01.08.2014 and Settlement Agreements dated 29.06.2016, 01.10.2019 and 29.12.2020 due to the failure of the parties to mutually appoint an Arbitrator within a period of 30 days.

FACTUAL BACKGROUND

2. The petitioner herein, Benetton India Private Limited, incorporated under the Companies Act, 1956,is a subsidiary of Italy based Benetton Group, known fashion company in the world and is engaged in a business of manufacturing, distributing and sale of apparel and accessories in India.

3. The respondent is a company incorporated under Companies Act, 1956 and is engaged in the business of manufacturing and distribution of textiles apparels and luxury goods.

4. The parties entered into a Distribution Agreement ("***DA***") dated 01.08.2014. Under the said DA the petitioner had appointed the respondent as its distributor to sell and distribute products under the brand, *interalia*, United Colors of Benetton and any other brand owned by the petitioner company through the respondent owned multi brand retail outlets which were located in different locations across India.

5. In terms of the DA, the petitioner supplied the products and raised invoices against each supply. As per General Conditions of Sale, as specified in Clause 10 of Schedule I of the DA, the respondent was bound to make payments against the invoices raised.

6. The respondent failed to make payments as per the invoices raised, thereby failing to discharge the liability under the DA to the tune of Rs. 8,97,57,566/- Crores along with the interest rate of 2% per month on the unpaid amount.

7. The parties, thereafter, agreed to extend the payment deadlines and thus entered into various Settlement Agreements ("***SA***"), the details of which are as follows:

a. SA 1 dated 29.06.2016 for an outstanding amount of Rs. 8,97,57,566/-

Crores to the petitioner

b. SA 2 dated 01.10.2019 for an outstanding amount of Rs. 3,91,81,453/- Crores

c. SA 3 dated 29.12.2020 for an outstanding amount of Rs. 2,70,81,454/- Crores

8. Despite the repayment schedule as per SA 3, a sum of Rs. 96,21,454/- Lakhs remained due and payable. In furtherance of the default made by the respondent, the petitioner issued a demand notice dated 09.02.2024 for the release of outstanding amount of Rs. 96,21,454/- Lakhs.

9. Since the respondent failed to clear the outstanding amount, the petitioner issued a legal notice dated 14.03.2024, invoking arbitration and called upon the respondent to mutually appoint an Arbitrator in terms of Clause No. 10 (j) of the DA. The Clause No. 10 (j) reads as under:

"10. <u>GENERAL PROVISIONS:</u>

....

(j) In the event of any difference, dispute, claim or question arising out of this Agreement or touching any matter or thing, hereunder during, the continuance of this Agreement or upon or after the termination thereof, such difference or dispute shall be referred to arbitration in New Delhi, to the arbitration of a sole Arbitrator to be jointly appointed by the Parties to the difference or dispute who shall be retired Judge of High Court. In the event the Parties are not mutually agreeable to such appointment, one arbitrator shall be nominated by both the Parties and such two (2) arbitrators shall jointly nominate the third arbitrator whose

decision shall be binding on the Parties.This reference shall be deemed to be a submission to the Arbitration within the meaning of the Arbitration and Conciliation Act 1996 and all the provision of that Act so far as applicable or of any Act of legislature of the time being in force and passed any modification thereof shall apply to every reference hereunder. Any suit, reference or other filing permitted or required to be made pursuant to the Arbitration and Conciliation Act, 1996 in respect of matters arising out of this agreement shall be instituted only in competent courts at New Delhi, which are competent courts to hear disputes arising out of this Agreement and parties specifically agree to exclude the jurisdiction of any competent court. All proceedings of arbitration shall take place in English language and held in New Delhi only. Subject to the foregoing, the courts at New Delhi shall have jurisdiction."

10. On 19.04.2024 the respondent paid Rs. 5,00,000/-, however, a sum of Rs. 91,21,454/- Lakhs remained unpaid and parties have failed to mutually agree upon the appointment an Arbitrator in terms of the arbitration clause of the DA. Hence, the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

11. Mr. Vinam Gupta, learned counsel for the petitioner, submits that the respondent does not dispute either the execution of the DA or the existence of the arbitration clause contained in Clause No. 10 (j) thereof. Thus, the petition satisfies the "prima facie" or "first look" test with regard to the existence of a valid arbitration agreement. In view of the

doctrine of kompetenz-kompetenz, he urges that the dispute be referred to the Arbitrator and the Arbitrator must be permitted to rule upon its own jurisdiction. Reliance is placed on the decision of the Hon'ble Supreme Court in ***Sanjiv Prakash v. Seema Kukreja, (2021) 9 SCC 732***

12. Learned counsel further places reliance on ***Vidya Drolia v. Durga Trading Corpn.,(2021) 2 SCC 1*** and reiterates his reliance on ***Sanjiv Prakash (Supra)***, to submit that issues relating to the formation, existence, validity of the contract, as well as questions of non-arbitrability, are often intertwined with the merits of the dispute. He contends that such issues involve disputed questions of fact and law which fall within the domain of the Arbitrator. Reliance is also placed on ***BSNL v. Nortel Networks (India)(P) Ltd., (2021) 5 SCC 738*** to contend that the Court may refuse reference to arbitration only in a narrow and limited category of cases. Where even the slightest doubt exists, the referral Court ought to lean in favour of reference to arbitration.

13. It is also stated that the Subsequent Agreements (SA I, SA II and SA III) executed between the parties were confined to restructuring or determining the schedule of payments and did not supersede or novate the original DA. According to the petitioner, the payment schedules were intrinsically linked to and flowed from the DA, the substantive terms of which continued to bind the parties. The SAs are arrangements only limited to payments operating within the umbrella of the principal DA, and consequently, the arbitration clause contained therein continues to govern the parties. Therefore, it would be misconceived to contend that the execution of the SAs had the effect of extinguishing or rendering inoperative the arbitration clause. In support of this submission, reliance

is placed on ***Collegedunia Web Private Limited v. PDM University & Ors., ARB. P. 244/2020*** and ***Balasore Alloys Ltd. V. Medima LLC, (2020) 9 SCC 136.***

14. He further states that even in a situation where the DA stands terminated, substituted, or its performance discharged, the arbitration clause survives for the purpose of adjudicating disputes arising out of or in connection with the DA. In this regard, reliance is placed on ***PVR Ltd. v. Imperia Wishfield (P) Ltd., 2022 SCC OnLine Del 3947*** to submit that an arbitration clause is separable and survives the termination of the underlying contract.

SUBMISSION ON BEHALF OF RESPONDENT

15. *Per Contra*, Ms. Renuka Sahu, learned counsel for the respondent, at the outset states that the present petition under Section 11 of the 1996 Act is not maintainable as there is no arbitration clause to govern the disputes between the parties. She states that SA I, SA II and SA III are fresh, distinct and independent contracts, executed after the commercial relationship between the parties under the DA had come to an end. The SAs constitute complete and self-contained agreements governing the rights and obligations of the parties, particularly with respect to payment obligations and jurisdiction. Accordingly, the terms embodied in the SAs are materially different and were consciously agreed upon, thereby giving rise to independent contractual arrangements unconnected with the earlier DA.

16. She points out that none of the SAs makes any reference to the DA. Moreover, the said SAs neither incorporate nor preserve the arbitration clause contained in the DA, nor do they provide that such clause would

survive or govern disputes arising thereafter. On the contrary, each of the SAs contains an express and independent jurisdiction clause conferring exclusive jurisdiction on specified courts, which are as follows:

SA I: "*All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of Courts at Mumbai*."

SA II: "*All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of Courts at Delhi.*"

SA III: "*All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of Courts at Delhi.*"

17. She further states that the execution of SAs between the parties amounts to a novation of the original DA within the meaning of Section 62 of the Indian Contract Act, 1872, and once a contract is superseded by a subsequent agreement, the rights and obligations arising under the earlier contract ceases to operate, and the relationship between the parties is thereafter governed exclusively by the terms of the new contract, Thus, in the present case, by virtue of such novation, the earlier DA stands extinguished and substituted by the new contractual arrangements embodied in the SAs. Consequently, all terms and stipulations of the original DA, including the arbitration clause contained therein, stand extinguished.

18. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Union of India v. Kishorilal Gupta and Bros., AIR (1959) SC 1362*** wherein it has been held that if a contract is superseded or novated by a new agreement, the arbitration clause, being a component of the old contract, perishes along with it and cannot be invoked for disputes arising thereafter. The Supreme Court further held that where a contract is

repudiated, discharged, or substituted by mutual consent, the arbitration clause also ceases to have effect. Further she places reliance on

I. ***Young Achievers v. IMS Learning Resources Pvt. Ltd., (2013) 10 SCC 535;***

II. ***B.L. Kashyap And Sons Ltd. v. Mist Avenue Private Ltd. (2023) SCC Online Del 3518;***

III. ***L&T Ltd Vs. IREO Victory Valley Private Limited 2024 SCC Online Del 2882;***

IV. ***Zhuhai Hansen Technology Co. Ltd. v. Aksh Optifibre Ltd., Delhi High Court: (2025) DHC 2490.***

19. It is also stated that the parties have consciously and expressly substituted arbitration with the exclusive jurisdiction of civil courts, thereby establishing a clear and unequivocal intention to exclude arbitration as the agreed dispute resolution mechanism. The same is evident from the jurisdiction clauses contained in all three SAs.

20. Learned counsel states that, by mutual consent, the parties have consciously and expressly substituted the earlier dispute resolution mechanism from the arbitral mechanism with a stipulation conferring exclusive jurisdiction upon competent civil courts. This clearly manifests the intention of the parties to exclude the recourse to arbitration. Reliance to substantiate this contention is placed on ***Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1*** and ***Wellington Associates Ltd. v. Kirit Mehta, (2000) 4 SCC 272.***

21. She also states that Section 11(6A) of the 1996 Act, as interpreted by the Hon'ble Supreme Court in ***Duro Felguera S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729*** limits the scope of examination by the Court at

the pre-reference stage to a singular and foundational issue, namely, the existence of an arbitration agreement. While exercising jurisdiction under Section 11of the 1996 Act, the Court must confine itself to determining whether a valid and subsisting arbitration agreement exists between the parties. In the present case, the operative and governing contract between the parties is the SA III dated 29.12.2020, which admittedly contains no arbitration clause. On the contrary, the said Agreement expressly stipulates that disputes arising there under shall be subject to the exclusive jurisdiction of the Courts at Delhi. In such circumstances, the statutory condition precedent under Section 11(6A) of the 1996 Act, i.e., the existence of an arbitration agreement governing the disputes in question, is absent. It is, thus, contended that the petition is liable to be dismissed at the threshold, as the very foundation for reference to arbitration is lacking. An Arbitrator, cannot assume jurisdiction in the absence of a valid arbitration agreement, and the power to determine the existence of such an agreement vests exclusively in the referral Court.

ANALYSIS AND FINDINGS

22. I have heard the learned counsel for the parties and perused the material on record.

23. The question that falls for consideration is whether a valid arbitration agreement exists between the parties.

24. Before examining the question in hand, it is important to set out the scope of Section 11 of the 1996 Act. In ***Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1,*** the Hon'ble Supreme Court categorically held that the scope of examination at the stage of appointment of an Arbitrator is limited to a

prima facie assessment of the existence of a valid arbitration agreement:

> *"81. One of the main objectives of the Arbitration Act is to minimise the supervisory role of Courts in the arbitral process. Party autonomy and settlement of disputes by an Arbitral Tribunal are the hallmarks of arbitration law. Section 5 gives effect to the true intention of the parties to have their disputes resolved through arbitration in a quick, efficient and effective manner by minimising judicial interference in the arbitral proceedings. [Food Corpn. of India v. Indian Council of Arbitration, (2003) 6 SCC 564.] Parliament enacted Section 5 to minimise the supervisory role of Courts in the arbitral process to the bare minimum, and only to the extent "so provided" under the Part I of the Arbitration Act. In doing so, the legislature did not altogether exclude the role of Courts or judicial authorities in arbitral proceedings, but limited it to circumstances where the support of judicial authorities is required for the successful implementation and enforcement of the arbitral process. [Union of India v. Popular Construction Co., (2001) 8 SCC 470; P. Anand Gajapathi Raju v. P.V.G. Raju, (2000) 4 SCC 539] The Arbitration Act envisages the role of Courts to "support arbitration process" [Swiss Timing Ltd. v. Commonwealth Games 2010 Organising Committee, (2014) 6 SCC 677 : (2014) 3 SCC (Civ) 642] by providing necessary aid and assistance when required by law in certain situations."*

25. A similar position was reiterated in ***SBI General Insurance Co. Ltd.v. Krish Spinning, 2024 SCC OnLine SC 1754*** and ***Goqii Technologies Private Limited v. Sokrati Technologies Private Limited, (2025) 2 SCC 192*** where the Hon'ble Supreme Court observed that the Arbitrator should be the preferred first authority to look into the questions of arbitrability and jurisdiction, and the courts at the referral stage should not get into contested questions involving complex facts.

26. Further, in ***Sanjiv Prakash (Supra)*** the Hon'ble Supreme Court dealt with the arbitrability of disputes at the stage of reference. The Hon'ble Court categorically held that the issue with respect to the novation of contract containing arbitration clause cannot be decided by a *prima facie* perusal of existence of arbitration clause in contract between the parties. The relevant paragraphs read as under:

> *"21. Likewise, in BSNL v. Nortel Networks (India) (P) Ltd. [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] , another Division Bench of this Court referred to Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] and concluded : (BSNL case [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] , SCC pp. 765-66, paras 46-47)*
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> > *"46. The upshot of the judgment in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] is affirmation of the position of law expounded in Duro Felguera [DuroFelguera, S.A. v. Gangavaram Port Ltd., (2017)*

9 SCC 729 : (2017) 4 SCC (Civ) 764] and Mayavati Trading [Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman, (2019) 8 SCC 714 : (2019) 4 SCC (Civ) 441] , which continue to hold the field. It must be understood clearly that Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] has not resurrected the pre-amendment position on the scope of power as held in SBP & Co. v. Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618]

47. It is only in the 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 tribunal."

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.

23. The impugned judgment was wholly incorrect in deciding that the plea of doctrine of kompetenz-kompetenz and reliance on Section 11(6-A) of the 1996 Act, as expounded in Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] and Mayavati Trading [Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman, (2019) 8 SCC 714 : (2019) 4 SCC (Civ) 441] were not applicable to the case in hand. Apart from going into a detailed consideration of the MoU

and the SHA, which is exclusively within the jurisdiction of the Arbitral Tribunal, the learned Single Judge, while considering Clause 28 of the SHA to arrive at the finding that any kind of agreement as detailed in Clause 28.2 between the parties shall stand superseded, does not even refer to Clause 28.1. No consideration has been given to the separate and distinct subject-matter of the MoU and the SHA. Also, Kishorilal Gupta [Union of India v. Kishorilal Gupta & Bros., (1960) 1 SCR 493 : AIR 1959 SC 1362] and Damodar Valley Corpn. [Damodar Valley Corpn. v. K.K. Kar, (1974) 1 SCC 141] are judgments which deal with novation in the context of the Arbitration Act, 1940, which had a scheme completely different from the scheme contained in Section 16 read with Section 11(6-A) of the 1996 Act.

(emphasis supplied)

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 non-existent, 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 the1996 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.

33. For the said reasons, and without commenting on the merits of the case, the petition is allowed and the following directions are issued:-

i) Mr. Varun Kumar Chopra (Advocate) (Mob. No. 9811851711) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').

iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the 1996 Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties,

including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, including the issue whether the arbitration clause is superseded by SA I, II and III, are left open for adjudication by the Arbitrator.

vi) The parties shall approach the Arbitrator within two weeks from today.

34. The petition is disposed of in aforesaid terms.

JASMEET SINGH, J.

FEBRUARY 26 , 2026/(MU)