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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION APPLICATION (L) NO.32224 OF 2026

1. Avenue Hotels Private Limited
2. Vinayak Hospitality Private Limited ... Applicants

Vs.

Mahanagar Gas Limited ... Respondent

ATUL GANESH KULKARNI

Digitally signed by ATUL GANESH KULKARNI
Date: 2026.11.05 11:16:08 +0530

Mr. Umesh Shetty, Senior Advocate with Mr. Vikram Kamath, Mr. Advait Shukla, Ms. Pranita Vailaya and Mr. Prakhar Dixit i/by Phoenix Legal for the Petitioners.

Mr. Mahesh Londhe with Mr. Netaji Gawande, Mr. Nimish Dashwani, and Mr. Rahul Sanghwi i/by M/s. Sanjay Udeshi & Co., for the Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : NOVEMBER 4, 2026.

PRONOUNCED ON : NOVEMBER 5, 2026

JUDGMENT:

1. By filing the present Application under Section 11 of the Arbitration and Conciliation Act, 1996, the Applicants are seeking appointment of a Sole Arbitrator to decide the disputes which have arisen between the parties out of and in connection with the PNG Supply Agreement / Terms and Conditions (Bill with Contract), bearing Consumer Reference No.220000000876 / BP No.1300000824, including Clause 13 thereof.

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2. I have heard Mr. Shetty, learned Senior Advocate appearing for the Applicants, and Mr. Londhe, learned Advocate appearing for the Respondent.

3. The first question is whether there is an arbitration agreement between the parties. The next question is whether the settlement said to have been arrived at on 24 April 2026 has brought the disputes between the parties to an end. It is necessary to consider how far this Court can go into these questions while deciding an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act").

4. The dispute between the parties relates to supply of Piped Natural Gas (PNG) to the commercial establishment known as "Hotel Avenue". The Applicants say that they have been receiving PNG supply from the Respondent since July 2002. According to them, the bills issued by the Respondent contain the Terms and Conditions relating to the supply, and these terms contain an arbitration clause. The Applicants say that the Respondent suddenly disconnected the gas supply on the ground that the meter was tampered with and thereafter raised a demand of Rs.37,84,196/-. They deny that they had tampered with the meter. They say that they paid Rs.17,00,000/- and gave two post-dated cheques for the remaining amount of Rs.20,84,196/-, but these payments were made under protest. According to them, they were left with no other choice if they wanted the gas supply to be restored.

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5. The Respondent has denied that there is any arbitration agreement between the parties. According to the Respondent, the contract between the parties is the Offer Letter dated 21 January 2002, which was accepted by Applicant No.1 on 5 March 2002. The said contract does not contain any arbitration clause. The Respondent says that the dispute regarding alleged meter tampering was settled in the meeting held on 24 April 2026. Therefore, according to the Respondent, there is no dispute left which can now be sent to arbitration. The Respondent has raised an objection that the Applicants are relying upon Clause 13 in the present Application, whereas the Invocation Notice dated 20 May 2026 refers to Clause 16.1.

6. Before considering these submissions, it is necessary to first see what this Court is required to examine under Section 11 of the Arbitration Act. At this stage, the Court is not required to decide the entire dispute as if a full trial is being held. The main thing to be seen is whether an arbitration agreement exists between the parties and whether the disputes raised by them arise out of or are connected with that agreement. If the claim is frivolous or is of such a nature that it cannot be decided by arbitration, the Court can refuse to send the matter to arbitration. But where the questions are disputed and require evidence to be examined, such questions are normally required to be decided by the Arbitral Tribunal.

7. In this regard, the judgment of the Supreme Court in *SBI General Insurance Co. Ltd. v. Krish Spg.,* (2024) 12 SCC 1, is of considerable help. In that judgment, the Supreme Court has

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considered the earlier judgments dealing with accord and satisfaction. It has explained what enquiry the Court can make under Section 11 of the Arbitration Act after Section 11(6-A) was introduced. The Supreme Court, in paragraph 95.4 of the said judgment, has observed as follows:

> "95.4. The view taken by SBP & Co. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] and Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] 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 1996 Act 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 [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] 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"."

8. The Supreme Court has considered that different views were taken in earlier judgments on the question of accord and satisfaction. In paragraph 95.5, it has observed as follows:

> "95.5. Despite the introduction of Section 11(6-A) and the decision in Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , there have been diverging views of this Court on whether the scope of the Referral Court under Section 11 of the 1996 Act includes the power to go into the question of "accord and satisfaction". In Antique Art [United India Insurance Co. Ltd. v. Antique Art Exports (P) Ltd., (2019) 5

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> SCC 362 : (2019) 2 SCC (Civ) 785] 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 [Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman, (2019) 8 SCC 714 : (2019) 4 SCC (Civ) 441] which reiterated the view taken in Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] and held that post the 2015 Amendment to the 1996 Act, it was no more open to the Court while exercising its power under Section 11 of the 1996 Act to go into the question of whether "accord and satisfaction" had taken place."

9. The Supreme Court has explained the special situations in which the Court can refuse to refer a dispute to arbitration. In paragraph 95.6, it has observed as follows:

> "95.6. The decision in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] although adopted the view taken in Mayawati Trading [Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman, (2019) 8 SCC 714 : (2019) 4 SCC (Civ) 441] yet it provided that in exceptional cases, where it was manifest that the claims were ex facie 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 Ltd. v. SPML Infra Ltd. [NTPC Ltd. v. SPML Infra Ltd., (2023) 9 SCC 385 : (2023) 4 SCC (Civ) 342] 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."

10. Finally, the Supreme Court has stated the legal position in paragraph 96 in the following words:

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> "96. Thus, the position after the decisions in Mayawati Trading [Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman, (2019) 8 SCC 714 : (2019) 4 SCC (Civ) 441] and Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] is that ordinarily, the Court while acting in exercise of its powers under Section 11 of the 1996 Act, 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."

11. From the above observations, it is clear that this Court is mainly required to see whether there is an arbitration agreement between the parties. If such an agreement is found to exist, the disputed questions regarding performance of the contract, alleged settlement and the effect of payments made by the parties are normally to be decided by the Arbitral Tribunal. This Court is not required to examine all disputed facts in detail at this stage, except where the case comes within the special circumstances explained by the Supreme Court.

<u>Whether an arbitration agreement exists between the parties:</u>

12. The first objection raised by Mr. Londhe is that the parties are governed by the original contract dated 5 March 2002. According to him, Applicant No.1 had first submitted the Registration Form dated 20 December 2001. Thereafter, the Respondent issued the Offer Letter dated 21 January 2002, which was accepted by Applicant No.1 on 5 March 2002. The said contract does not contain any arbitration clause. Therefore, according to the Respondent, the Applicants cannot now rely upon the terms and conditions printed on the reverse side of the later

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monthly bills and claim that there is an arbitration agreement between the parties.

13. Mr. Shetty, however, submits that the terms and conditions relating to PNG supply were changed from time to time. According to him, from April 2021 onwards, the Respondent started printing detailed Terms and Conditions on the bills issued to the Applicants. These terms contain an arbitration clause. The Respondent issued these bills and continued to supply gas. Therefore, according to Mr. Shetty, the Respondent cannot now refuse to accept the arbitration clause which forms part of the bills issued by it.

14. There is no dispute that the PNG connection was originally given to Applicant No.1 under the Offer Letter dated 21 January 2002, which was accepted on 5 March 2002. The Respondent relies upon these documents and says that the original contract was only between Applicant No.1 and the Respondent. According to it, this contract replaced the earlier documents and did not contain any arbitration clause. However, the question is whether the original contract continued to govern the parties in the same manner, without any change, even after the Respondent started issuing later bills containing different Terms and Conditions. Only because the original contract did not contain an arbitration clause, it cannot be said that the parties could not agree to such a clause at a later time. The terms of a contract can be changed by a later agreement between the parties. Whether such a change took place will have to be seen from the documents and the conduct of both sides.

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15. In the present case, the Applicants have produced copies of bills issued by the Respondent from April 2021 to December 2025. They have relied upon the bill dated 23 April 2026, which contains the Terms and Conditions governing PNG supply. An arbitration clause is printed in those terms. These bills have been issued by the Respondent in the name of Hotel Avenue. The Respondent has continued to supply gas and has accepted payments against these bills. Therefore, the Applicants are not relying upon some separate document which has no connection with the Respondent. They are relying upon the terms printed by the Respondent on the bills issued while the gas supply was being continued. It is true that merely because certain conditions are printed on an invoice, it does not always mean that the other party has accepted those conditions as part of the contract. Normally, an invoice is issued to show the amount which is payable for the goods or services supplied. Therefore, the nature of the document, the reason for issuing it and the conduct of the parties will have to be seen. However, in the present case, the Applicants are relying upon the dealings between the parties over several years. The Respondent issued bills containing detailed Terms and Conditions. The Applicants received those bills and made payments. The Respondent continued to supply PNG. These terms deal with the duties of the consumer, the rights of MGL, the manner in which the supply is to be made and the way in which disputes are to be resolved.

16. There is one important condition in the Terms and Conditions which reads as follows:

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> "MGL reserves its right to amend, add or delete any of these terms and conditions at any time as required pursuant to any directions given by any statutory body/Regulator which shall be binding on the Consumer including amendments due to change in law."

17. This condition shows that the Respondent had kept a provision for making changes in the Terms and Conditions from time to time. However, only because such a condition is there, it cannot be said that every change made by the Respondent will become binding upon the consumer. Whether the later terms were properly introduced and accepted will have to be seen from the actual bills and the conduct of the parties. It is necessary to note that the Respondent has not denied that it issued the bills relied upon by the Applicants. Its case is that the bills were issued under the original contract and that they did not create any separate contract. This submission cannot be accepted. The Applicants are not required to show that every monthly bill created a fresh contract between the parties. Their case is that the terms printed on those bills became part of the continuing arrangement for supply of PNG. These are different matters. Even if the bills were issued under the original contract, it would not prevent the parties from adding terms at a later stage to govern their continuing relationship.

18. In my view, the existence of the original contract dated 5 March 2002 does not give an answer to the question raised in this Application. The later bills and the terms printed on them will have to be considered. The Respondent says that only the original contract governs the parties and that the later terms have no

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effect. This submission requires examination of the documents and the conduct of both sides. It cannot be finally decided at this stage merely by accepting the Respondent's statement.

19. The Respondent has relied upon the Terms and Conditions governing PNG supply while raising its demand of Rs.37,84,196/-. Its letter dated 16 April 2026 refers to charges towards alleged gas consumption, additional security deposit, disconnection, reconnection, meter and equipment. Thus, the Respondent says that its demand arises out of the contractual arrangement governing PNG supply. At this stage, it cannot completely separate the terms governing the supply from the consequences which, according to it, have arisen due to breach of those terms. I am therefore unable to accept the Respondent's submission that the original contract dated 5 March 2002, only because it did not contain an arbitration clause, completely rules out the possibility of a later arbitration agreement between the parties. The later bills and the Terms and Conditions printed on them give sufficient basis, at this stage, to examine whether the arbitration clause became part of the continuing contractual relationship. The final question as to which terms govern the parties and whether the later terms were accepted will remain open for the Arbitral Tribunal to decide.

Whether the difference between Clause 13 and Clause 16.1 is fatal to the Application:

20. The next objection raised by Mr. Londhe is that the Invocation Notice dated 20 May 2026 refers to Clause 16.1,

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whereas the present Application seeks appointment of an Arbitrator by relying upon Clause 13. According to him, these are two different arbitration clauses forming part of different contractual documents. The Applicants cannot first invoke arbitration under one clause and thereafter file an Application under Section 11 by relying upon another clause. According to the Respondent, because of this difference, the Invocation Notice and the present Application do not have the required connection.

21. This objection requires consideration. Merely because both clauses contain an arbitration provision, the difference between them cannot be ignored. The notice invoking arbitration and the Application seeking appointment of an Arbitrator have to be read together. The Respondent is entitled to know which arbitration agreement is being relied upon and which disputes the Applicants want to refer to arbitration.

22. I have gone through the Invocation Notice dated 20 May 2026. In paragraph 2 thereof, the Applicants have stated that arbitration is being invoked under the arbitration clause contained in the contract governing PNG supply, as set out in the Bills with Contract issued by MGL. The notice reproduces Clause 16.1, which reads as follows:

> "16.1 Any difference of dispute arising out of or in connection with these Terms and Conditions shall be referred to the arbitration of a Sole Arbitrator to be appointed by the seller. The arbitration shall be subject to the provisions of the Arbitration and Reconciliation Act 1996 or any statutory amendment or modification thereof or any re-enactment thereof and shall be held in Mumbai."

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23. Thus, it is clear that the Invocation Notice refers to Clause 16.1 and the Terms and Conditions governing PNG supply. It mentions the Consumer Reference Number, BP Number and meter number. The notice gives details of the disputes relating to alleged meter tampering, disconnection of gas supply and the demand raised by the Respondent. It calls upon the Respondent to take part in the appointment of an Arbitrator within thirty days. It is equally true that in the present Application, the Applicants have relied upon Clause 13. This clause provides that disputes relating to the meaning or effect of any term of the Terms and Conditions, implementation of obligations and other matters arising out of or connected with them shall be referred to a Sole Arbitrator. It provides that the Arbitrator shall be appointed by mutual agreement and, if the parties are unable to appoint an Arbitrator, the appointment shall be made in accordance with the Arbitration Act.

24. The difference in the clause numbers and the manner of appointment cannot be ignored. Under Clause 16.1, the Sole Arbitrator is to be appointed by the seller. On the other hand, Clause 13 provides for appointment by mutual agreement between the parties. These differences are important. The Applicants cannot say that both clauses have exactly the same wording and effect. However, the question at this stage is whether the Applicants have completely failed to invoke arbitration in respect of the disputes now raised in the present Application. In my view, the answer is no. The Invocation Notice mentions the PNG supply arrangement and the bills containing the Terms and Conditions. It reproduces

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an arbitration clause and asks that the disputes arising out of the same supply arrangement be referred to arbitration. The Respondent has understood the nature of these disputes and has given a detailed reply. In its reply, the Respondent has dealt with the alleged meter tampering, the demand of Rs.37,84,196/-, the alleged settlement dated 24 April 2026 and the existence of the arbitration agreement.

25. Therefore, this is not a case where the Respondent did not know which disputes the Applicants wanted to refer to arbitration. It is not a case where the Applicants have raised some completely new dispute in the present Application. The disputes mentioned in the Invocation Notice and those raised in the present Application are substantially the same. Both arise from the alleged meter tampering, disconnection of PNG supply and the demand raised by the Respondent.

26. Section 21 of the Arbitration Act requires a party to inform the other party that it wants the dispute to be referred to arbitration. The purpose of giving such notice is to inform the other party that a dispute has arisen and that the party issuing the notice wants the dispute to be decided through arbitration. In the present case, the notice has served this purpose. Only because there is a difference in the clause number mentioned in the notice and the clause relied upon in the Application, the invocation cannot be treated as completely invalid, particularly when the dispute and the PNG supply arrangement are identified. At the same time, the Applicants will have to explain before the Arbitral Tribunal why they are relying upon Clause 13 and how it is

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connected with Clause 16.1. Whether Clause 13 forms part of the same contractual arrangement, whether it was introduced by the Respondent and whether it applies to the disputes arising out of the alleged meter tampering are questions which can be examined by the Tribunal. This Court is not required to finally interpret these different contractual provisions while deciding the present Application under Section 11. I therefore do not find that the difference between Clause 13 and Clause 16.1 is enough, in the facts of the present case, to dismiss the Application. The Invocation Notice informed the Respondent that the Applicants wanted the disputes arising out of the PNG supply arrangement to be referred to arbitration. The Respondent cannot now say that it was unaware either of the disputes or of the Applicants' intention to invoke arbitration.

Whether Applicant No.2 can participate in arbitration:

27. Mr. Londhe has submitted that the original contract was entered into only between Applicant No.1 and the Respondent. Applicant No.2 was not a party to the Offer Letter dated 21 January 2002 or its acceptance dated 5 March 2002. Therefore, according to him, Applicant No.2 cannot claim any right under the arbitration agreement only because the business is jointly carried on in the name of Hotel Avenue.

28. Mr. Shetty, on the other hand, submits that both the Applicants jointly carry on the restaurant and banquet business under the trade name “Hotel Avenue”. The monthly bills were regularly issued in the name of Hotel Avenue. Payments made by

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Applicant No.2 were accepted by the Respondent. Therefore, according to him, the Respondent cannot now say that Applicant No.2 has no connection with the contractual relationship.

29. There is some force in the objection raised by the Respondent. Merely because two companies are sister concerns or carry on business jointly under one trade name, it does not mean that both companies become parties to every contract entered into by either of them. The separate legal identity of each company has to be kept in mind. However, the Applicants have relied upon the bills issued in the name of Hotel Avenue. They have stated that payments made by Applicant No.2 were accepted by the Respondent. These facts are relevant for understanding the actual business relationship between the parties. Whether Applicant No.2 was intended to be bound by the arbitration agreement or was entitled to rely upon it cannot be decided only by looking at the name mentioned in the original Offer Letter. At the same time, the material presently available does not permit this Court to finally hold that Applicant No.2 independently entered into an arbitration agreement with the Respondent. The original contract relied upon by the Respondent is between Applicant No.1 and the Respondent. The fact that payments were accepted from Applicant No.2 and that bills were issued in the trade name of Hotel Avenue are relevant circumstances. However, these facts alone do not finally establish that Applicant No.2 became a party to the arbitration agreement. In these circumstances, the question whether Applicant No.2 is covered by the arbitration agreement will have to be examined by the Arbitral Tribunal on the basis of the relevant

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documents and the conduct of the parties. The present order will not be treated as a final finding that Applicant No.2 is a party to the arbitration agreement. The Tribunal will be free to decide this question according to law. However, the disputes between Applicant No.1 and the Respondent cannot be refused reference only because the position of Applicant No.2 is disputed.

Whether the alleged settlement dated 24 April 2026 puts an end to the arbitration agreement:

30. The objection raised by the Respondent relates to the alleged settlement dated 24 April 2026. Mr. Londhe submits that the Applicants have deliberately not disclosed the settlement meeting held at the Respondent's office at BKC. According to him, during that meeting, Mr. Bhaskar Shetty, representing Applicant No.1, agreed to pay the entire amount of Rs.37,84,196/-. It was agreed that Rs.17,00,000/- would be paid immediately and the remaining amount of Rs.20,84,196/- would be paid in two equal monthly instalments of Rs.10,42,098/- each. The payment of these amounts was to be secured by post-dated cheques.

31. Mr. Londhe submits that the terms agreed during the meeting were written down in the Minutes of Meeting circulated through email dated 24 April 2026. According to him, the Applicants accepted the settlement and acted upon it. They paid Rs.17,00,000/-, handed over two post-dated cheques for the remaining amount and thereafter obtained restoration of PNG supply on 29 April 2026. Therefore, according to the Respondent, the dispute regarding meter tampering was finally settled, and the

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Applicants cannot again ask for referring the same dispute to arbitration.

32. Mr. Shetty disputes this submission. He says that no final settlement was ever reached between the parties. According to him, the Applicants were facing serious difficulty because the PNG supply had suddenly been disconnected. PNG was necessary for running their restaurant and banquet business. The Respondent was the only supplier of PNG in the area and the Applicants had no other arrangement to obtain the same. In such circumstances, they were compelled to pay Rs.17,00,000/- and give two post-dated cheques only for getting the gas supply restored. The payment was made under protest and without giving up their rights. According to him, they had to make the payment because of economic pressure. Mr. Shetty points out that the Applicants had sent a letter dated 25 April 2026. In that letter, they stated that the payment of Rs.17,00,000/- was being made under protest and without prejudice to their rights. The Applicants again sent a letter dated 28 April 2026 and repeated their protest. They made it clear that the payment did not mean that they accepted the allegations of meter tampering or admitted any liability. According to Mr. Shetty, these letters show that the Applicants had never agreed to treat the demand of the Respondent as a full and final settlement.

33. I have considered the submissions made by both sides. There is no dispute that a meeting between the representatives of the parties was held on 24 April 2026. The Respondent says that a settlement was reached in that meeting. The Applicants refer to the discussions held on that date. Therefore, the fact that

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discussions took place is not in dispute. The real question is what was agreed during the meeting and what effect is to be given to that understanding.

34. According to the Respondent, the Applicants had agreed to pay the entire demand of Rs.37,84,196/- without making any protest. The Respondent says that the Minutes of Meeting were circulated by email on 24 April 2026 and the Applicants did not immediately object to them. Therefore, according to the Respondent, the letters dated 25 April 2026 and 28 April 2026 were sent later only as an afterthought, after the Applicants had accepted the settlement. On the other hand, the Applicants rely upon their letter dated 25 April 2026. This letter records that during the discussions held on 24 April 2026, it was agreed that PNG supply would be restored on payment of Rs.17,00,000/- out of the total disputed demand of Rs.37,84,196/-. The remaining amount was to be paid in instalments. The letter states that the amount was being paid under protest and that MGL would accept the same on a without-prejudice basis.

35. The said letter records that the payment was being made because of the difficulties caused by disconnection of PNG supply. The Applicants made it clear that they were not accepting the allegations of meter tampering or admitting their liability to pay the amount demanded. They stated that the payment was being made because of economic compulsion and duress, as the Respondent was the only supplier of PNG in the area. The relevant part of the said letter makes the stand of the Applicants clear. They have stated:

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> "The said deposit will however be made by us under protest and be accepted by MGL on a without prejudice basis."

36. They have stated:

> "By making this payment, we do not, in any manner, admit, acknowledge, or accept the allegations of gas meter tampering leveled by MGL in its notices dated 16th April, 2026"

37. The Applicants have expressly stated that the payment was being made because of:

> "the economic compulsion and duress resulting from MGL's unilateral, arbitrary, and unjustified disconnection of gas supply".

38. Thus, the letter dated 25 April 2026 is not a protest which was made after a long time or after the dispute remained without any action for several months. It was sent immediately after the meeting dated 24 April 2026 and before payment of Rs.17,00,000/- on 28 April 2026. The letter dated 28 April 2026 repeats the same position. Therefore, the Applicants' case that the payment was made under protest is supported by the letters issued at the relevant time.

39. Mr. Londhe submits that the Applicants did not object to the email dated 24 April 2026 by which the Minutes of Meeting were circulated. According to him, once the settlement had been reached, the Applicants could not change its effect by sending letters afterwards. This submission requires consideration. If the parties had finally agreed to settle the dispute on 24 April 2026, a later letter sent by one party alone may not be enough to cancel or

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change that settlement. However, the question is whether the email recorded a final and unconditional settlement, whether the Applicants accepted all its terms and whether the later letters were part of the understanding between the parties. These questions will have to be considered by looking at the actual communications and the circumstances in which they were sent.

40. I find that the Respondent's own Response Letter dated 26 June 2026 records its version of the meeting dated 24 April 2026. According to the Respondent, the Applicants agreed to pay the entire amount and the Respondent agreed to restore the gas supply by installing a new meter. The Respondent states that the new meter was installed and PNG supply was restored on 29 April 2026. However, the letters dated 25 April 2026 and 28 April 2026 sent by the Applicants record that the payments were being made under protest and without prejudice to their rights. Thus, two different versions are placed before the Court. They are against each other.

41. There is one more circumstance which requires consideration. The Respondent says that the Minutes of Meeting were circulated by email dated 24 April 2026 and the Applicants did not immediately dispute them. However, only because a party does not immediately reply to an email, it cannot in every case be treated as acceptance of all the terms mentioned in that email. Such silence may be one circumstance while considering the conduct of the parties. But it cannot prove that a final and binding settlement was reached. The contents of the email, the manner in which it was sent, the response of the Applicants and their later

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correspondence will have to be considered together. Further, according to the Respondent, the settlement was reached for resolving the dispute regarding meter tampering. The Respondent says that it agreed to install a new meter and restore PNG supply because the Applicants agreed to pay the amount demanded. The Applicants, however, say that they made the payment only because they wanted the essential gas supply to be restored. They never accepted the allegations or the demand. Therefore, the question is whether the parties really wanted to bring all disputes regarding meter tampering to an end, or whether the arrangement was only for making payment so that the gas supply could be restored, while keeping the Applicants' right to challenge the demand open.

42. In my view, this difference is important. Every arrangement under which money is paid cannot be treated as a full and final settlement. It must be shown that both parties wanted to bring the existing disputes to an end. If the payment was made only as an interim arrangement or under protest for getting the supply restored, the payment may not mean that the Applicants accepted the demand without objection. On the other hand, if the parties had voluntarily agreed to settle the entire dispute and had acted upon that settlement, the legal position may be different.

43. The Respondent has relied upon the fact that the Applicants paid Rs.17,00,000/-, handed over two post-dated cheques for the remaining amount and thereafter got the gas supply restored. These facts do support the Respondent's case that some arrangement was reached between the parties. The restoration of supply on 29 April 2026 shows that the parties acted upon the

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discussions held on 24 April 2026. However, these facts alone do not prove that the Applicants voluntarily accepted the entire demand as correct or gave up their right to challenge it. The letters dated 25 April 2026 and 28 April 2026 will have to be considered along with the payment and restoration of supply.

44. It is necessary to look at the circumstances in which the payment was made. The Applicants were carrying on a restaurant and banquet business. According to them, PNG was necessary for running their business and they had no other source of supply because the Respondent was the only supplier in the area. The gas supply had been disconnected and the Applicants were facing difficulty in running their business. Therefore, according to them, they had to make the payment and hand over the cheques if they wanted the supply to be restored.

45. The Respondent disputes that the Applicants were put under any pressure or compulsion. According to the Respondent, the Applicants themselves requested restoration of supply and voluntarily offered to pay the amount demanded. Whether the Applicants were under economic pressure, whether the Respondent used its position as the PNG supplier to make them pay and whether the payment was made voluntarily are all disputed questions. These matters cannot be decided only by accepting what either side says.

46. I am conscious that the Applicants cannot avoid the effect of a final settlement only by using the words “under protest” or “without prejudice” in their letters. If the documents and the

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conduct of the parties show that a final settlement had been reached, its legal effect will have to be considered. At the same time, the Respondent cannot prove a final settlement only by pointing out that payment was made and gas supply was restored. The protest made by the Applicants before making the payment is required to be considered. Therefore, whether a final settlement was reached on 24 April 2026, whether it was made voluntarily and whether it brought the earlier disputes to an end cannot be finally decided in the present Application. For deciding these questions, it will be necessary to examine the Minutes of Meeting, the email dated 24 April 2026, the letters dated 25 April 2026 and 28 April 2026, the payment records, the post-dated cheques and the circumstances in which the new meter was installed and gas supply was restored.

47. In this regard, the judgment of the Supreme Court in *Krish Spg.* becomes important. The Supreme Court has considered the earlier legal position regarding accord and satisfaction. It has held that after introduction of Section 11(6-A), the Court normally cannot make a detailed enquiry to decide whether the contract has come to an end because of accord and satisfaction between the parties. The Supreme Court has made it clear that the Court which is considering reference to arbitration can refuse such reference in an exceptional case where the allegation of fraud or coercion is ex facie frivolous and has no merit at all. This is the test described as the “eye of the needle” test in paragraph 95.6 of the said judgment.

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48. In the present case, the Applicants have not made only a general statement that they were forced to make the payment. They have relied upon their letters dated 25 April 2026 and 28 April 2026, which were sent before and at the time of making the payment. They have relied upon the fact that gas supply had been disconnected and they were dependent upon the Respondent for getting it restored. These circumstances give some support to their claim of economic pressure. Whether these circumstances are enough to prove coercion or duress will have to be decided after considering the evidence. At this stage, their claim cannot be said to be without any basis or completely frivolous.

49. It is relevant that the Applicants issued the Invocation Notice on 20 May 2026. Thus, after making the payment and getting the gas supply restored, they did not wait for a long time before claiming their right to arbitration. The notice was issued within about three weeks from the payment and restoration of supply. This conduct is required to be considered while examining the Respondent's submission that the Applicants had accepted the settlement and thereafter given up their right to invoke arbitration.

Whether the judgment in Ranjit Kantilal Shah applies to the present case:

50. Mr. Londhe has relied upon the judgment of this Court in *Ranjit Kantilal Shah & Anr. v. Kruti Infrastructure & Ors.*, Arbitration Petition No.55 of 2021, decided on 15 June 2023. In that case, the Petitioners had invoked arbitration under Clause 11(f) of the Partnership Deed. The Respondents opposed the

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Application by pointing out that the parties had reached a settlement. The settlement was recorded in the minutes of meetings dated 19 September 2019 and 24 October 2019.

51. In paragraph 18 of the said judgment, this Court held as follows:

> "18. In my considered view, the Petitioners have not come with clean hands and have not taken steps in proceeding with arbitration in view of the settlement arrived at between the Petitioners and Respondents which are not only reflected in the meeting held on 19th September, 2019 but subsequent meeting dated 24th October, 2019. Further, the settlement has been acted upon. The disputes now alleged between the Petitioners and Respondents is with regard to the implementation and / or execution of the settlement arrived at between Petitioners and Respondents. There is no arbitration clause in the settlement agreement. The Petitioners cannot fall back on Clause 11(f) of the Partnership Deed for referring the alleged disputes to arbitration."

52. It is true that the said judgment supports the Respondent's submission that where the parties have reached a final settlement, have acted upon it and the later dispute is only about carrying out that settlement, they cannot go back to the arbitration clause contained in the earlier agreement. However, the facts of the present case are different in certain important ways.

53. In Ranjit Kantilal Shah, the terms of settlement were recorded in the minutes of meetings dated 19 September 2019 and 24 October 2019. The minutes were signed by the parties. There was material showing that steps were taken to carry out the

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settlement. The Court found that the Petitioners had not disclosed these important documents in the Arbitration Petition. The Court had earlier considered the non-disclosure of the settlement documents in the contempt proceedings.

54. In the present case, the Applicants themselves have referred to the meeting dated 24 April 2026 and the discussions which took place thereafter. More importantly, their letter dated 25 April 2026 records that the payment was being made under protest and without prejudice to their rights. The letter dated 28 April 2026 repeats the same position. The Respondent disputes the effect of these letters and says that a final settlement had been reached. Thus, in the present case, the very fact whether a settlement was reached and what effect it has is disputed between the parties.

55. There is a difference in the conduct of the parties. In *Ranjit Kantilal Shah*, the Court found that the Petitioners had not taken any steps for about two years after the settlement and had given up the earlier arbitration notice. In the present case, the Applicants issued the Invocation Notice on 20 May 2026, shortly after the alleged settlement and after making payment under protest. Therefore, the finding in *Ranjit Kantilal Shah* regarding giving up the arbitration notice cannot be applied in the same manner to the present case.

56. I therefore find that the judgment in *Ranjit Kantilal Shah* does not help the Respondent to the extent claimed by it. There is no dispute about the principle laid down in that judgment. However, whether a final settlement was reached, whether it was

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acted upon and what steps the parties took thereafter will depend upon the facts of each case. In the present case, these matters are seriously disputed. The Applicants have produced letters issued at the relevant time to support their case that the payment was made under protest. Further, the judgment in *Ranjit Kantilal Shah* was decided on the basis of the law and facts which were before the Court in that case. The later judgment of the Supreme Court in *Krish Spg.* has explained the limited enquiry which the Court can make under Section 11 of the Arbitration Act after introduction of Section 11(6-A). Therefore, the present Application will have to be considered in the light of the legal position explained by the Supreme Court in paragraph 96 of that judgment.

57. In view of the above, I am unable to hold at this stage that the alleged settlement dated 24 April 2026 has finally ended the Applicants' right to invoke arbitration. The Respondent will be free to raise this issue before the Arbitral Tribunal and produce the Minutes of Meeting, email dated 24 April 2026 and all other relevant documents. The Tribunal will decide whether the settlement was reached, whether the parties acted upon it voluntarily and whether it has brought the disputes arising out of the original PNG supply arrangement to an end.

Whether the allegations of meter tampering and theft are required to be examined in this Application:

58. The Respondent has made serious allegations against the Applicants regarding tampering with the gas meter and theft of PNG. According to the Respondent, its Integrated Control

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Command Centre received alerts on 1 March 2026 and 1 April 2026, showing the meter status as “Device Dead”. Thereafter, a team of its experts visited the premises on 14 April 2026. The Respondent says that the inspection was carried out in the presence of Mr. A.K. Nandi, Manager of Applicant No.1. During the inspection, two drill marks were found on the acrylic meter counter, the pulse cable was found cut and the MIU device and pulse cable were missing. The Respondent says that an inspection report was prepared in the presence of the representative of Applicant No.1 and that he signed the report without raising any objection. According to the Respondent, the representative requested its officials to postpone disconnection of gas supply until the business hours were over. Therefore, the gas supply was disconnected at 23.05 hours on 14 April 2026. The Respondent says that the inspection and disconnection were carried out by following the applicable rules and its Standard Operating Procedures.

59. The Applicants deny these allegations. According to them, earlier inspections carried out by the Respondent's approved agencies on 17 December 2024 and 29 September 2025 did not show any meter tampering. They rely upon the certificate dated 7 November 2025 issued by M/s. Sai Enterprises, an authorised contractor of the Respondent. The said certificate stated that the PNG pipeline installation was safe. They point out that the Respondent had installed a new meter on 9 December 2025 after receiving payment of Rs.1,20,443/- from them. The Applicants submit that the meter reading was physically taken by the

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Respondent's authorised person on 6 April 2026. Thereafter, a bill was raised on 7 April 2026 and the Applicants paid the same on 9 April 2026, before the due date. According to them, there was no unusual increase in gas consumption or any other circumstance which could have given rise to the allegation of meter tampering.

60. I find that the submissions made by both sides on this issue involve disputed facts. The earlier inspection reports and the certificate issued by the authorised contractor are relevant documents. These documents may support the Applicants' case that no meter tampering was noticed during those inspections. However, only because no tampering was noticed in December 2024 or September 2025, it cannot be said that the meter could not have been tampered with at a later date. Similarly, the fact that the Respondent installed a new meter in December 2025 and thereafter its authorised person took a meter reading on 6 April 2026 is relevant. But these circumstances alone cannot finally prove that there was no interference with the meter in April 2026.

61. On the other hand, the Respondent's claim that the meter was found tampered with and that its inspection report was signed by the representative of Applicant No.1 will have to be proved. The Applicants dispute these allegations. They say that the Respondent did not give them any inspection report, photographs or technical material along with its demand letter dated 16 April 2026. The Respondent, however, says that it has the necessary reports and that the inspection was carried out in the presence of the Applicants' representative.

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62. Whether the inspection was properly carried out, whether the irregularities alleged by the Respondent were found, whether the report was signed by the representative of Applicant No.1 and what importance is to be given to that signature are all matters which will require examination of evidence. The same is the position regarding the calculation of the demand of Rs.37,84,196/-. The Respondent has given a breakup of the demand under different heads. These include alleged gas consumption charges, additional security deposit, disconnection, reconnection, meter and equipment charges. The Applicants dispute the basis on which this amount has been calculated. They dispute the amount.

63. I am, therefore, not inclined to examine these questions in detail in the present proceedings. While exercising jurisdiction under Section 11, this Court is not required to decide whether the gas meter was tampered with or whether the Applicants committed theft of PNG. These questions relate to the merits of the dispute. If the matter is sent to arbitration, both sides will get an opportunity to produce the inspection reports, technical material, meter readings, consumption records and other relevant documents before the Arbitral Tribunal. It is necessary to make one thing clear. Sending the contractual disputes to arbitration will not prevent the Respondent from taking appropriate steps according to law in relation to any alleged criminal offence. At the same time, the allegations of theft or meter tampering cannot be treated as proved only because the Respondent has made such allegations. The Arbitral Tribunal can decide the contractual consequences

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arising out of the alleged meter tampering. However, it will not decide criminal liability. That question is required to be examined by the competent criminal court or authority according to law.

Whether there is an arbitrable dispute between the parties:

64. The Respondent has contended that no dispute remains for arbitration because the Applicants had agreed to pay the entire amount and the gas supply was restored under the settlement dated 24 April 2026. The Applicants, however, say that they dispute the demand and that the payment and post-dated cheques were given only under protest. They claim that they are entitled to recover the amount paid and receive compensation for the losses suffered because of disconnection of gas supply.

65. After considering these submissions, I find that disputes do exist between the parties regarding the alleged breach of the terms governing PNG supply, the legality of disconnection, the demand raised by the Respondent and the liability of the Applicants to pay the amount demanded. The Applicants have claimed recovery of the amount paid and compensation for the losses allegedly suffered by them. All these disputes arise out of or are connected with the PNG supply arrangement between the parties.

66. The Respondent's contention that the dispute has been settled cannot be accepted as a reason for refusing reference at this stage. As discussed, the Applicants have produced letters issued at the relevant time stating that the payments were made under protest and without prejudice. The Respondent disputes the effect of these letters and relies upon the alleged Minutes of Meeting

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dated 24 April 2026. Thus, there is a real dispute between the parties about whether a final settlement was reached and what legal effect it has. In these circumstances, it cannot be said that the Applicants' claim is ex facie frivolous or that there is no dispute which requires consideration.

67. It is important that the Respondent has disputed the claims made by the Applicants on merits. It has denied that the gas supply was disconnected arbitrarily. It has alleged that the meter was tampered with and has justified the demand raised by it. It has claimed that the Applicants are required to honour the payment arrangement dated 24 April 2026. These rival claims show that the parties are not agreeing about their contractual rights and liabilities.

68. The Respondent cannot, on one hand, say that the Applicants have committed breach of the contractual arrangement and are liable to pay the amount demanded, and on the other hand, say that no dispute exists between the parties. Only because the Respondent has a different version of the events, it cannot be said that there is no dispute. Whether the claims made by either side are correct will have to be decided by the Arbitral Tribunal. I therefore find that the disputes raised by the Applicants can be referred to arbitration. However, the questions regarding the existence and scope of the arbitration agreement and the effect of the alleged settlement will remain open for the Tribunal to decide according to law.

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69. I am, therefore, of the considered view that an arbitration agreement exists, at least prima facie, in relation to the PNG supply arrangement between Applicant No.1 and the Respondent. The disputes raised by Applicant No.1 arise out of or are connected with that arrangement. The Respondent has not been able to show that the alleged settlement dated 24 April 2026 is a clear and undisputed full and final settlement which has brought all the disputes to an end. Therefore, the Application deserves to be allowed. It is made clear that this Court has not given any final opinion about whether the meter was tampered with, whether the demand raised by the Respondent is correct, whether the disconnection was legal, whether the alleged settlement dated 24 April 2026 is valid and binding, whether there was economic duress or whether the Applicants are entitled to recover any amount or claim damages. All these questions are kept open for decision by the Arbitral Tribunal. The Tribunal will decide them independently and will not be influenced by the observations made in this judgment.

70. In the aforesaid circumstances, the present Application under Section 11 of the Act, is deserved to be disposed of in terms of the following order:

> A) Mr. Harsh Moorjani, an Advocate of this court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes arising between Applicant No.1 and the Respondent out of or in connection with the PNG Supply Agreement / Terms and Conditions governing supply of PNG bearing Consumer Reference No.220000000876 / BP

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No.1300000824, including the claims and counterclaims arising therefrom;

Office Address:- C/o. Senior Advocate Mr. Ashish Kamat, 501, 5th Floor, Oval House, Old British Lane, Kala Ghoda, Fort, Mumbai – 400 001

Contact No.: 97697 30867

Email: harshmoorjani.legal@gmail.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

E) The parties shall appear before the Learned Sole

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Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

F) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

71. The question whether Applicant No.2 is a party to the arbitration agreement or is entitled to invoke the same shall be decided by the Arbitral Tribunal according to law.

72. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

73. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

74. The Application is accordingly disposed of. There shall be no order as to costs.

(AMIT BORKAR, J.)

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