2026:DHC:7285

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

% ***Judgment pronounced on: 31.08.2026***

\# **CNR No.DLHC010585952025**

\+ **O.M.P.(I) (COMM.) 332/2025**

M/S BLINK FIX PRIVATE LIMITED .....Petitioner

Through: Mr. Anand Shankar Jha and Mr. Sachin Mintri, Advocates.

versus

M/S GLOBAL INDIA SERVICES & ANR. .....Respondents

Through: Mr. Ankit Sareen, Ms. Shubhangi Sharma and Ms. Diksha Sobti, Advocates for R-1.
Mr. Abhisar Bhanu, Advocate for R-2.

\# **CNR No.DLHC010074812026**

\+ **ARB.P. 370/2026**

BLINK FIX PRIVATE LIMITED .....Petitioner

Through: Mr. Anand Shankar Jha and Mr. Sachin Mintri, Advocates.

versus

GLOBAL INDIA SERVICES .....Respondent

Through: Mr. Ankit Sareen, Ms. Shubhangi Sharma and Ms. Diksha Sobti, Advocates.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

ARB.P. 370/2026

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (“A&C Act”) seeks the appointment of a sole

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arbitrator to adjudicate the disputes between the parties arising out of a Letter of Engagement dated 01.04.2021.

2. The petitioner, M/s Blink Fix Private Limited, is a company engaged in the business of marketing services, principally in the insurance sector. The respondent, M/s Global India Services, is a sole proprietorship concern, carrying on business at Jaipur, Rajasthan.

3. By the Letter of Engagement dated 01.04.2021, the respondent was engaged by the petitioner, on a non-exclusive basis, to render marketing, branding and promotional services on commercial terms with regard to compensation as set out in Annexure-A thereto. The Letter of Engagement contains, an 'Indemnification and Limitations of Liability' clause as well as an arbitration clause.

4. It is the petitioner's case that between 27.04.2022 and 29.02.2024 the respondent raised invoices upon it aggregating to a taxable value of Rs. 18,53,31,120/-, together with goods and services tax ("**GST**") at 18% amounting to Rs. 3,33,59,601.59/-; and that between 02.04.2022 and 13.06.2024, the petitioner made payments to the respondent aggregating to Rs. 22,27,82,622.09/-. As per the petitioner, since the GST component was already paid to the respondent, the petitioner availed input tax credit ("ITC") in its own GST returns.

5. By letter No. 499 dated 19.10.2024, a notice was issued under Rule 86A of the Central Goods and Services Tax Rules, 2017 by the Deputy Commissioner (SIB), State Tax, Division-A, Gautam Buddha Nagar, Zone Noida. It recorded that an inspection had been carried out at the petitioner's place of business on 01.10.2024, and that the petitioner had claimed faulty input tax credit by purchasing from non-existent firms. The firm-wise

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particulars mentioned in the notice include, *inter alia*, the invoices raised by the respondent upon the petitioner during the financial years 2022-23 and 2023-2024. The notice records:

> *"It is clear from the above chart that you are wrongly claiming ITC by declaring inward supplies from non-existent firms. Section-16(2)(c) of the GST Act clearly states, 'Subject to the provision of section - 41, the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of input tax credit admissible in respect of the said supply.' It is clear from the above section of the GST Act 2017 that the buyer trader should not be entitled to ITC and the benefit of ITC is admissible only upon the condition that the tax collected on the said transaction by the selling trader has actually been deposited in the government treasury as per rules, but the traders from whom inward supply has been declared by you have not actually deposited any tax in the government treasury. Hence, under the provisions of GST Act 2017, you are not admissible the benefit of the said ITC."*

6. The registration of the respondent stands cancelled *suo moto* with retrospective effect from 30.09.2021. The respondent has challenged that cancellation before the High Court of Judicature at Rajasthan by D.B. Civil Writ Petition No. 8240/2025, which is stated to be pending.

7. On 23.04.2025, the petitioner issued a Demand Notice cum Invocation of Arbitration to the respondent. Invoking the indemnity clause of the Letter of Engagement, it called upon the respondent to indemnify it in the sum of Rs. 3,33,59,601.59/- with interest at 18% per annum, being the tax component paid by the petitioner to the respondent under the Letter of Engagement. The notice invoked the arbitration clause and proposed three names, for appointment of one of them as sole arbitrator, to adjudicate the disputes between the parties, under the aegis of the Delhi International Arbitration Centre.

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8. The respondent replied on 20.05.2025, denying the claim and asserting that the tax collected had been duly deposited. It contended that reliance upon the indemnity clause was misplaced, and that the clause applied only to breach of the Letter of Engagement, of intellectual property rights, or of confidentiality obligations, and no such breach has been alleged. The Respondent did not accede to the appointment of an arbitrator.

9. It is the petitioner's case that on 20.06.2025 it deposited Rs. 4,46,16,401/- with the goods and services tax authorities by way of Form DRC-03 (ARN: AD090625059817G), comprising tax of Rs. 3,33,59,152/-, interest of Rs. 62,53,376/- and penalty of Rs. 50,03,873/-.

10. Learned counsel for the petitioner submits that disputes have arisen between the parties to an arbitration agreement; that the efforts to have a sole arbitrator appointed have failed, the respondent having neither consented to any of the names proposed nor concurred in any appointment of arbitrator; and that the petitioner is accordingly constrained to invoke Section 11(6) of the Act. The claim is founded upon the indemnity clause in the Letter of Engagement, the tax component having been charged by the respondent on its own invoices and paid to it thereunder.

11. Learned counsel for the respondent, opposes the petition on the grounds that; the dispute is *ex facie* non-arbitrable and falls within the exclusive jurisdiction of the GST authorities.

12. The Respondent’s case is that the substratum of the dispute, is the alleged non-deposit of tax by the respondent and the consequent reversal of credit, so that the foundation of the claim is an alleged statutory default, and the entire cause of action emanates from the proceedings initiated by the tax authorities and the payment made pursuant thereto. The questions which

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would necessarily arise are whether any tax was in fact collected, whether it was required to be deposited, whether it was duly discharged, whether the petitioner was legally liable to reverse the credit, and whether the demand of tax, interest and penalty was validly raised. These are all aspects which involve adjudication of questions under the Central Goods and Services Tax Act, 2017 and the applicable State legislation, and fall within the statutory domain and jurisdiction of the competent authorities. The dispute is accordingly said to be statutory in character and, to the extent that it seeks determination of the validity, levy, collection, reversal or discharge of tax liability, incapable of adjudication by a private tribunal, an arbitral tribunal being unable to assume the jurisdiction vested by those enactments in the competent authorities or to sit in appeal over their determination. It is further asserted that this is a dispute *in rem*, concerning the liability towards the State exchequer with implications beyond the *inter se* contractual relationship.

13. Upon the arbitration agreement, it is contended that the clause provides for arbitration only in respect of disputes between the parties under the contract and cannot be construed as conferring jurisdiction to adjudicate disputes arising independently from statutory proceedings; and that the present dispute does not arise from any ordinary contractual disagreement regarding the performance of the services rendered under the Letter of Engagement.

14. Without prejudice to the above, it is contended that no liability is admitted; that the respondent has denied that any amount is due or payable and has disputed the assertion that it failed to deposit the tax collected. The respondent submits that the tax component has already been deposited with

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the Government and is reflected in the statutory returns, so that permitting recovery of the same sum would expose the respondent to a claim for an amount already remitted; and that the petitioner's payment to the authorities cannot automatically create a corresponding right of reimbursement, its entitlement remaining disputed and incapable of being presumed from the factum of payment.

15. It is also urged by the respondent that the jurisdiction exercised under Section 11 is not a mechanical exercise for the appointment of an arbitrator, that the Court must at the appropriate level of scrutiny examine the existence of a valid arbitration agreement, and that in a case of manifest non arbitrability it should decline reference at the threshold. They pray that the petition be dismissed and that the dispute be held to be *ex facie* non-arbitrable and outside the scope of the arbitration agreement contained in the Letter of Engagement dated 01.04.2021.

REASONING AND CONCLUSION:

16. The controversy lies within a narrow compass. The petitioner paid to the respondent, along with contract consideration, amounts represented by the respondent in its invoices as the goods and services tax. The petitioner availed input tax credit in respect of those amounts. The GST authorities thereafter called upon the petitioner to reverse the input tax credit on the footing that the GST collected had not been deposited by the respondent and the respondent’s GST registration stood cancelled with retrospective effect.

17. The petitioner reversed the credit and paid tax, interest and penalty and now seeks to recover that sum from the respondent through arbitration.

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18. The primary defense of the respondent is that the claim of the petitioner is in a sense a tax dispute which is not arbitrable at all.

Scope of the present proceedings:

19. The legal position is well settled that the scope of the present proceedings is confined to ascertaining whether there exists an arbitration agreement between the parties or not. In this regard, the legal position has been set out in the judgment of the Supreme Court in ***SBI General Insurance Co. Ltd. Vs. Krish Spinning*** 2024 (12) SCC 1 in the following terms:

> *"117. In view of the observations made by this Court in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, 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 Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re."*

20. The same has been reiterated in ***Office for Alternative Architecture vs Ircon Infrastructure and Services Ltd.*** 2025 SCC OnLine SC 1098 wherein the question which came up for the consideration of the Supreme Court was whether, while exercising power under section 11 of the 1996 Act, the Court was required to confine its consideration as to the existence of an arbitration agreement between the parties and whether it is permissible for the court to hold that some of the claims raised are non-arbitrable or fall within 'excepted' category. The Supreme Court observed as under:

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"9. The statement of objects and reasons of the 2015 amendment with reference to insertion of sub-section (6A) in Section 11 of the 1996 Act, reads thus:

> *"(iii) an application for appointment of an Arbitrator shall be disposed of by the High Court or the Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of 60 days.*
> *(iv) to provide that while considering any application for appointment of Arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues."*

10. The significance of the use of the expression "not other issues" in the statement of objects and reasons of the 2015 amendment was noticed by a seven-Judge bench of this Court in In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 18995, and it was observed:

> *"209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an Arbitrator shall 'examine the existence of prima facie arbitration agreement and not other issues'. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings."*

11. Relying on the above observations made by this Court in In Re: Interplay (supra), a three-judge bench of this Court in "SBI General Insurance Co. Ltd. v. Krish Spinning" observed:

> *"114. ….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 v. Durga Trading Corporation7 (supra) and adopted in 'NTPC v. SPML Infra Limited8 (supra) that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra)".*
>
> ***Emphasis Supplied***

12. As the above decision has been rendered by a three-Judge bench of this Court after considering the seven-Judge bench decision of this Court in In Re: Interplay (supra), we are of the view that the respondent cannot profit from certain observations made by a two-Judge bench of this Court in Emaar

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(supra). In our view, therefore, the High Court fell in error in bisecting the claim of the appellant into two parts, one arbitrable and the other not arbitrable, when it foundarbitration agreement to be there for settlement of disputes between the parties. The correct course for the High Court was to leave it open to the party to raise the issue of non-arbitrability of certain claims before the arbitral tribunal, which, if raised, could be considered and decided by it."

21. In the instant case, the petitioner seeks to raise a pure monetary claim against the respondent on the basis of the *inter se* dealings between the parties pursuant to the contractual arrangement between them, viz. the Letter of Engagement dated 01.04.2021. The same contains an arbitration clause which is in the following terms:-

> *"In case of any disputes between the parties under this Letter, the Parties resolve to settle the dispute/s through mutual negotiation and discussions. In the event that the said dispute/s are not settled within 30 days of the arising thereof, the same shall finally be settled and determined by arbitration in accordance with the Arbitration and Conciliation Act, 1996 or any amendment thereof. The language to be used in the arbitral proceedings shall be English. The arbitrator will be selected by the joint approval of both the Parties. Each Party shall bear its own cost of preparing and presenting its case and the arbitration proceedings. The courts of New Delhi, India shall have exclusive jurisdiction for all disputes arising out of this Letter."*

22. The existence of the arbitration agreement being not in dispute; all objections pertaining to jurisdiction/arbitrability are required to be decided by a duly constituted arbitral tribunal. *Prima facie*, therefore, this Court finds no merit in the objections raised by the respondent to constitution of an arbitral tribunal.

23. However, the learned counsel for the respondent insists that given the kind of dispute that has been sought to be raised, non-arbitrability is manifest on the face of the record. The learned counsel for the respondent has gone to the extent of urging that for all practical purposes, given the

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nature of the disputes/s sought to be raised, there cannot be said to be in existence any arbitration agreement between the parties. It is for the purpose of forming a *prima facie* opinion on this aspect, that this Court has examined the matter further on merits.

Distinction Between a 'Tax Dispute' And 'Contractual Dispute':

24. There can be no cavil with the proposition that levy, assessment, collection and recovery of tax by the State is an exercise of sovereign power. The questions about whether a tax is exigible, whether an assessment is proper, whether input tax credit was rightly denied or not, or whether a GST registration was validly cancelled or not are questions required to be determined by the statutory authorities in the context of the statutory framework set out in the relevant taxing statutes.

25. However, a dispute as to which of the two contracting parties must ultimately bear an indirect tax burden or as to whether one contracting party must make good to the other a sum which is collected on a representation that it would be remitted to exchequer, are disputes of an altogether different character. These are disputes about money that has passed between two private parties under a contract. Clearly, these are disputes *in personam*. Resolution of such disputes which are essentially pure money claims *inter se* the contracting parties, neither determines the liability of either parties to the revenue, nor binds the revenue, nor encroaches upon the sovereign function of taxation.

26. As noticed in the present case, the petitioner seeks to make a pure money claim against the respondent. There is no reason to deny the

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petitioner adjudication of the said claim by taking recourse to the arbitration agreement between the parties.

27. In ***Spectrum Power Generation Limited vs. GAIL (India) Limited***, 2022 SCC OnLine Del 4262, a coordinate Bench of this Court had occasion to deal with a petition under Section 11 of the A&C Act concerning a claim for refund of amounts collected by supplier as GST under gas sales agreement. It was held by this Court that the issue which essentially arose was whether GST liability could have been passed on to the petitioner therein and it was held that such a dispute was a dispute between parties *inter se*, having no bearing on the taxing power of a State. This Court allowed the petition under Section 11 and appointed a sole arbitrator to adjudicate the disputes between the parties. The relevant observation in the said judgment are as under :

> *"16. However, it is relevant to bear in mind that the petitioner here does not assail, question or dispute a tax that may have been imposed upon it by the State in exercise of its sovereign or statutory powers. The issue which is essentially raised is whether the GST/VAT liability which came to be placed upon GAIL could be passed onto the petitioner or it be held liable to reimburse GAIL to the aforesaid extent under the agreement. The challenge is raised solely on the anvil of Article 10.6. The petitioner asserts that it was only liable to bear such taxes as may have been shouldered by GAIL while purchasing gas from any supplier or any tax that may have been levied or stood attracted at the time when natural gas was sold to the petitioner. Viewed in the aforesaid light, it is manifest that the issue does not relate to the taxing power of the State or any action taken or an order made in exercise thereof."*

28. Reliance sought to be placed by the respondent on a judgment of the Madhya Pradesh High Court in case of ***Premief Shield Pvt. Ltd. Vs. Indian Institute of Science Education and Research Bhopal***, 2026:MPHC-JBP:13339, is misconceived. In the said case, the contractor was itself liable to pay tax upon service charges it received from the respondent therein. The

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respondent assumed no contractual liability to pay/deposit the GST and did not even have a GST registration. In those circumstances, the Court held that since admittedly, the respondent had assumed no obligation with regard to the payment/deposit of GST, there was no occasion to raise any dispute regarding reimbursement of tax/GST by the respondent. It was in that context that the Court declined to entertain the petition under Section 11 of the A&C Act.

29. In the present case, the respondent charged the tax in its own invoices, received the same from the petitioner, and was obliged to deposit the same before the tax authority. The sum sought to be claimed, is a sum which admittedly passed on from the petitioner to the respondent in the guise of GST. The entire claim is founded upon a payment made by one contracting party to the other party under the contract. As such, the facts are quite distinct from those in the case of ***Premief Shield Pvt. Ltd.*** (supra).

30. In the circumstances, this Court is unable to accept the plea of the respondent that non-arbitrability of the disputes sought to be raised by the petitioner is manifest in the facts and the circumstances of the present case. While so observing, it is clarified that only a *prima facie* view has been taken by this Court, and it shall be open to the respondent to take appropriate objections as regards jurisdiction/arbitrability during the course of arbitral proceedings *inter-alia* by moving an application under Section 16 of the A&C Act which shall necessarily be considered by the arbitrator on its own merits.

31. Given that the existence of the arbitration agreement is admitted and the fact that the Delhi is the juridical seat of arbitration, it is incumbent upon this Court to appoint an independant sole arbitrator to adjudicate the disputes

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between the parties as mandated in terms of the dicta laid down in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, (2024) 12 SCC 1, ***Aslam Ismail Khan Deshmukh v. ASAP Fluids Private Limited & Anr.***, (2025) 1 SCC 502 and ***Maharashtra State Electricity Distribution Co. Ltd. & Ors. v. R Z Malpani,*** 2026 SCC OnLine SC 553.

32. Accordingly, Mr. Justice (Retd.) J.R. Midha, former Judge, Delhi High Court (Mob: +91 9717495003) is appointed as the sole arbitrator to adjudicate the disputes between the parties.

33. It is made clear that the respondent shall be entitled to raise appropriate objections as regards jurisdiction and arbitrability which shall be considered by the sole arbitrator on its own merits.

34. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

35. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

36. The parties shall share the arbitrator's fee and arbitral costs, equally.

37. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

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

39. The present petition stands disposed of in the above terms.

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40. Since an arbitral tribunal has been constituted in ARB.P. 370/2026, it shall be apposite if the present petition is treated as one under Section 17 of the A&C Act and is dealt with by the learned sole arbitrator. It is directed accordingly.

41. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

AUGUST 31, 2026/ *at/nb*

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