# THE BLIND GATEKEEPER: SECTION 11 AND THE SEARCH FOR A LIMITED JUDICIAL FILTER

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## ABSTRACT

Indian arbitration jurisprudence has spent nearly two decades deciding how closely a court should look before stepping aside for an arbitrator. This paper examines the latest and most consequential turn in that history: the quiet collapse of the "secular filter", a power referral courts exercised under Section 11 of the Arbitration and Conciliation Act, 1996 to refuse arbitration where a dispute was plainly and undeniably dead, most often because the parties had already settled. Built through Vidya Drolia v Durga Trading Corporation and refined in NTPC Ltd. v SPML Infra Ltd., this filter has often been understood as having eroded gradually, as an unintended consequence of the seven-judge bench ruling in In Re: Interplay Between Arbitration Agreements and the Indian Stamp Act. This paper argues otherwise as it identifies SBI General Insurance Co. Ltd. v Krish Spinning, decided seven months after Interplay, as the precise moment when the filter was closed, and traces how that closure has produced not confusion but confident, settled application by the Delhi High Court through 2025 and 2026, an application that still carries a real and measurable cost for respondents holding a genuinely dead claim. Drawing a comparison with Singapore's shallow standard of review and England's deeper one, the paper proposes a narrow statutory remedy, the Patent Bar Exception, designed to restore a limited screening power without reviving the broad judicial intervention that Indian arbitration law spent two decades dismantling.

**Keywords:** Section 11; Arbitration and Conciliation Act 1996; Kompetenz-Kompetenz; Judicial Intervention; Patent Bar Exception.

## INTRODUCTION

Indian arbitration law has spent two decades deciding how closely a court should look before stepping aside for an arbitrator. This paper is about the most consequential turn in that history, one that has quietly closed a power, courts once used to stop dead disputes from reaching arbitration at all.

That power had a name. In *Vidya Drolia v Durga Trading Corporation* ("***hereinafter Vijay Drolia***"), the Hon'ble Supreme Court described a narrow role for referral courts under Section 11 of the Arbitration and Conciliation Act, 1996 ("***hereinafter ACA***"), one that could "cut off the deadwood" where a dispute was manifestly dead on its face. Two years later, *NTPC Ltd. v. SPML Infra Ltd*. ("***hereinafter NTPC***") sharpened this into what came to be called the eye of the needle test, allowing a court to refuse a reference where a settlement was clear and undisputed on the record. Neither case gave courts a licence to retry disputes. Both gave them a narrow, defined space to recognise a dead claim when they saw one.

That space no longer exists in the form these cases built it. On 13 December 2023, a seven-judge bench in *In Re: Interplay Between Arbitration Agreements and the Indian Stamp Act* ("***hereinafter*** Interplay") decided a case about unstamped contracts, but described a referral court's role in terms far broader than that question required. Seven months later, a three-judge bench in *SBI General Insurance Co. Ltd. v Krish Spinning* ("***hereinafter Krish Spinning***") took that broader language at its word, holding that the screening power built through Vidya Drolia and NTPC could no longer be exercised at the Section 11 stage. This paper's claim is that this is the precise moment the filter collapsed, not some later, vaguer erosion, and that it happened for reasons that had nothing to do with accord and satisfaction itself.

What this paper does next is examine how that closure has actually played out, and here the evidence points somewhere more interesting than a story of judicial unease. The Delhi High Court decisions through 2025 and 2026 do not show courts straining against *Krish Spinning* or reluctantly applying a rule they dislike. They show the opposite: a settled, confidently applied position, treated as the ordinary starting point for referral applications rather than a live controversy. This is, in one sense, good news for legal certainty. It is also exactly why this paper argues reform is needed. A rule applied with total confidence still has a cost, and that cost falls on respondents who hold a genuinely settled claim but must now bear the price of a full arbitration, tribunal fees, institutional charges, and the real possibility of years more delay if the tribunal's ruling is later challenged, before anyone examines whether the dispute was ever alive to begin with. The problem this paper identifies is not confusion. It is a settled rule that no longer distinguishes between a contestable defence and an undisputed, document-proven bar.

This paper traces how the screening power was built, from *SBP & Co. v Patel Engineering Ltd*. ("***hereinafter SBP & Co.***") in 2005 through the 2015 Amendment to *Vidya Drolia* and *NTPC*, and how it was dismantled within a single year through *Interplay* and *Krish Spinning*. It then examines the 2025-26 Delhi High Court decisions as evidence of settled, routine application, and quantifies what that routine application actually costs a respondent forced through the full arbitral process. Comparing India's position with Singapore's similarly shallow standard of review and England's considerably deeper one, the paper argues that India does not need either extreme. What it needs is a narrow, carefully bounded exception, the Patent Bar Exception, allowing a referral court to recognise a dispute that is barred on the face of an undisputed document, without reopening the door to the kind of full merits inquiry Indian arbitration law spent two decades trying to close.

A legal system can prize certainty and still get the wrong result more often than it should. This paper is an attempt to show precisely where that gap has opened, and what a narrow, disciplined fix could look like.

## WHAT DOES SECTION 11 ACTUALLY SCREEN?

Section 11 of the ACA does not ask whether the claimant will ultimately succeed. Its narrower function is to determine whether the parties have agreed to arbitrate the dispute. The court must therefore distinguish objections concerning the arbitration agreement from objections concerning the underlying claim.[1]

The two Parts that follow trace how this distinction was built, beginning with *SBP & Co* in 2005[2], and how it eventually gave way in 2024, in *Krish Spinning*.[3]

The distinction matters because an objection may completely extinguish a claim while

[1] Arbitration and Conciliation Act 1996, ss 7, 11 and 16; In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899 (2024) 6 SCC 1, paras 143-145.
[2] *SBP & Co v Patel Engineering Ltd* (2005) 8 SCC 618.
[3] *SBI General Insurance Co Ltd v Krish Spinning* 2024 INSC 532.

remaining outside the Section 11 enquiry. A settlement, for instance, may ultimately defeat the claimant's case, but determining whether it was voluntary, genuine, and legally effective may require examination of surrounding circumstances. Such an enquiry is ordinarily for the arbitral tribunal rather than the referral court.

The present position therefore establishes a functional division between Sections 11 and 16 of the ACA.[4] The court primarily determines whether an arbitration agreement exists, while the tribunal ordinarily determines jurisdictional and substantive objections requiring factual or legal examination. The tribunal ordinarily determines jurisdictional and substantive objections requiring factual or legal examination. This division protects competence-competence and prevents Section 11 from becoming a preliminary trial.

Yet this framework creates a narrower question for reform. What happens where an alleged bar is established conclusively by an undisputed document, leaving no factual issue for the tribunal to determine? *Krish Spinning* makes clear that ordinary accord and satisfaction objections must remain with the tribunal, but it also exposes the practical cost of referring disputes where the alleged bar is genuinely self-evident. The reform question is therefore not whether Section 11 should become a forum for merits review, but whether a tightly confined exception should exist for genuinely patent bars requiring no factual adjudication.

## THE BIRTH OF THE SECULAR FILTER: SBP & CO. TO VIDYA DROLIA TO NTPC V. SPML

*What legal foundation gave a referral court the power to screen out settled disputes, and how did that power take shape across two decades before it began to erode in 2023?*

In 2005, a seven-judge bench of the Hon'ble Supreme Court *in SBP & Co.* held that the power to appoint an arbitrator under Section 11 of the ACA was a judicial power and not an administrative one.[5] That understanding allowed the referral courts to examine more than the bare existence of an arbitration clause, including the validity of the agreement, whether the applicant had the right to invoke arbitration, and whether the claim remained alive. The result was a referral stage that commentators criticised as resembling a preliminary trial, with parties

[4] Arbitration and Conciliation Act 1996, ss, 11 and 16;
[5] *SBP & Co v Patel Engineering Ltd* (2005) 8 SCC 618.

potentially litigating the same issues before both the court and the tribunal.[6]

The Law Commission confronted this problem in its 246th Report of 2014, identifying the delay caused by the broad interpretation of Section 11 and recommending that the court's role be confined to a prima facie examination of the arbitration agreement's existence.[7] Parliament responded through the 2015 Amendment, inserted Section 11(6-A) to the act and directed courts, notwithstanding the earlier judgments to examine only the existence of the arbitration agreement.[8] The amendment appeared to settle the question, but an important ambiguity remained: did existence permit the court to consider whether the claim itself had ceased to exist?

In *Duro Felguera SA v Gangavaram Port Ltd*, the Supreme Court supplied a narrow answer. It held that the Section 11(6-A) inquiry was limited to "nothing more, nothing less" than the existence of the arbitration agreement.[9] Yet the position did not remain stable. In *United India Insurance Co Ltd v Antique Art Exports (P) Ltd* ("***hereinafter, Antique Art***"), the Court accepted an objection of accord and satisfaction at the referral stage, effectively recognising that a dispute which had already been settled need not proceed to arbitration.[10]

The Court soon reversed the position it had taken in Antique Art. In *Mayavati Trading Pvt Ltd v Pradyut Deb Burman* ("***hereinafter, Mayavati***"), a three-judge bench expressly overruled Antique Art, holding that accord and satisfaction was not ordinarily for the referral court to determine and fell within the tribunal's domain.[11] The decision restored the narrow approach associated with Section 11(6-A), but it did not eliminate the deeper tension between judicial screening and arbitral autonomy.

That tension was reworked in Vidya Drolia v Durga Trading Corporation ("hereinafter, Vidya Drolia"). The Court formulated a four-part test for arbitrability while recognising a limited referral-stage role where non-arbitrability or invalidity was manifest. It described this function

[6] 'Arbitration and Conciliation Act: Conundrum in Section 11' (Bar & Bench, 2018); see also Kriti Shree, 'From *SBP v Patel to UPNL v NCL*: How Amendments Reshaped Judicial Intervention in Arbitration' (SCC Online Blog, 29 December 2025) accessed 1 September 2026.
[7] Law Commission of India, Amendments to the Arbitration and Conciliation Act, 1996, Report No 246 (August 2014).
[8] Arbitration and Conciliation (Amendment) Act 2015, s 6, inserting s 11(6-A) into the Arbitration and Conciliation Act 1996.
[9] *Duro Felguera SA v Gangavaram Port Ltd* (2017) 9 SCC 729.
[10] *United India Insurance Co Ltd v Antique Art Exports Pvt. Ltd.* (2019) 5 SCC 362.
[11] *Mayavati Trading Pvt Ltd v Pradyut Deb Burman* (2019) 8 SCC 714.

as "cutting off the deadwood".[12] This paper uses the term secular filter as a descriptive label for that limited screening power: not a merits review, but a narrow ability to refuse reference where the defect was apparent without substantive adjudication. *Vidya Drolia* therefore reopened a space that Mayavati had largely closed.

*NTPC Ltd v SPML Infra Ltd* ("***hereinafter, NTPC***"), decided by a two-judge bench in 2023, sharpened that approach through the "eye of the needle" test.[13] The court's task was framed in two stages: first, whether a valid arbitration agreement existed; and second, whether the dispute was ex facie non-arbitrable. Accord and satisfaction remained ordinarily a mixed question of law and fact for the tribunal, but *NTPC* recognised that the referral court could intervene where the settlement was clear and undisputed.[14] Contemporary commentary consequently viewed *NTPC* as expanding the Section 11 of the ACA inquiry beyond a purely formal examination.[15]

The result was a carefully balanced position. The referral court was not expected to adjudicate the merits, but neither was it required to refer a dispute whose death was apparent on the record. The *Vidya Drolia-NTPC* line thus preserved a narrow judicial filter against manifestly dead claims while leaving ordinary factual disputes to the tribunal.

That balance lasted barely a year. In December 2023, a seven-judge bench addressed the validity of unstamped arbitration agreements in *Interplay*, but its reasoning on Section 11 would reach far beyond stamping.

## THE PIVOT: IN RE INTERPLAY AND THE COLLAPSE INTO *KRISH SPINNING*

Every legal filter has a moment when it stops working. For the secular filter this paper has built, that moment came within a single year, between December 2023 and July 2024. The filter did not weaken gradually. It was displaced through a doctrinal shift that began in a case which, on its face, was not about accord and satisfaction at all.

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[12] *Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1; ibid, paras 154.3–154.4.
[13] *NTPC Ltd v SPML Infra Ltd* (2023) 9 SCC 385.
[14] *ibid*.
[15] Anirudh Krishnan, Hitesh Singhvi and Pranay Prakash, 'Mayavati Trading - Back to where the Law should be, But...' (Bar & Bench, 17 December 2019); Pranav Budihal, 'Stamping Out The Uncertainty - The Supreme Court's Way Forward for a Modern and Efficient Arbitration Regime for India' (Kluwer Arbitration Blog, 18 February 2024); 'SC Expands Scope of Enquiry under Section 11 of the Arbitration Act' (IndiaCorpLaw, 11 September 2023), all accessed 4 September 2026.

*Interplay* reached a seven-judge bench over a narrower question than this paper is concerned with. The issue was whether an arbitration agreement in an unstamped or insufficiently stamped contract was void, a position the Court had taken two years earlier in *N.N. Global Mercantile Pvt. Ltd. v Indo Unique Flame Ltd*.[16] The bench overruled that view, holding that non-stamping does not render the agreement non-existent and that the defect is curable. On its facts, *Interplay* is a stamp duty case, one that settles only whether a missing stamp can stop an arbitration before it starts.[17]

Judgments, however, are remembered not only for what they decide, but for how they explain themselves, and here *Interplay* did more than its facts required. The bench described the referral court's role in general terms: a Section 11 inquiry is confined to a prima facie examination of the agreement's existence, while questions of substantive validity and jurisdiction belong to the arbitral tribunal.[18] A broadly stated principle rarely stays confined to the case that produced it, and later courts read this one as a general rule, not one reserved for stamping disputes.[19]

That next case arrived on 18 July 2024, a little over seven months after *Interplay*. *Krish Spinning* concerned a fire insurance claim and a discharge voucher, the same kind of fact pattern NTPC had dealt with only a year earlier.[20] The insured party argued that the voucher had been signed under pressure, while the insurer maintained the dispute was already closed. The three-judge bench in that case upheld the reference to arbitration, but the reasoning matters more than the result. At paragraph 114 of the case, the Court held that once *Interplay* is taken seriously, the earlier position in *Vidya Drolia*, carried forward in *NTPC*, which let a referral court weed out ex-facie non-arbitrable or frivolous disputes, could no longer stand. Accord and satisfaction, the Court reasoned, does not go to the existence of the arbitration agreement; it goes to the merits, and under Interplay's rule, the merits belong to the tribunal alone.[21]

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[16] *In re Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996* and the Indian Stamp Act 1899 (2024) 6 SCC 1.

[17] *ibid*; Pranav Budihal, 'Stamping Out The Uncertainty' (Kluwer Arbitration Blog, 18 February 2024) https://arbitrationblog.kluwerarbitration.com/2024/02/18/stamping-out-the-uncertainty-the-supreme-courts-way-forward-for-a-modern-and-efficient-arbitration-regime-for-india/ accessed 1 September 2026.

[18] *In re Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996*; Swarnendu Chatterjee and Shreya Mittal, 'Part 1 - Case Note: In Re: Interplay' (NLIU Centre for Business and Commercial Laws, 12 July 2024) and 'Part 2 - Case Note: In Re: Interplay' (NLIU Centre for Business and Commercial Laws, 12 July 2024), both accessed 4 September 2026.

[19] Shreya Jain, Mrinali Komandur and Shweta Kabra, '2024 in Review: Arbitration in India – Reset or Rewind?' (Kluwer Arbitration Blog, 15 February 2025) accessed 29 August 2026.

[20] *SBI General Insurance Co Ltd v Krish Spinning* 2024 INSC 532.

[21] Kuberinder Bajaj, 'Supreme Court Clarifies the Scope of Section 11 of the Arbitration and Conciliation Act, 1996' (IndiaCorpLaw, 26 November 2024) accessed 1 September 2026.

In Mayavati, the Court closed the filter once in 2019. In NTPC, a two-judge bench reopened a careful space within it in 2023. In *Krish Spinning*, a three-judge bench closed that space again in 2024.[22] On its face this looks like one bench disagreeing with another of similar strength. It is not. *Krish Spinning* applies a seven-judge constitutional bench ruling that sits above both, and Delhi High Court orders since have said so in plain terms, describing Vidya Drolia and NTPC's findings on this point as no longer compatible with how the Court now reads Section 11.[23]

This is the point this paper is built to make. The erosion of the secular filter was not an accident as it happened on the record, roughly sixteen months after NTPC had reaffirmed the very filter it now closed.[24] What was left unresolved by July 2024 was not the doctrine. It was the practical cost of applying it, and that cost is what the next two Parts of this paper set out to document.

**THE 2025–26 CASES: CONFIDENT APPLICATION, NOT FRACTURE**

The real test of *Krish Spinning* is how courts have applied it afterwards. Recent Delhi High Court decisions suggest that the judgment has produced consistency rather than doctrinal uncertainty. Courts increasingly treat its limited approach to Section 11 as the ordinary starting point for referral applications.

In *Anil Kumar Wadhwa v. M2M Buildtech Pvt Ltd* ("***hereinafter, Wadhwa***"), the petitioner sought appointment of a sole arbitrator under Section 11(6) of the ACA. The respondents did not dispute the arbitration agreement and consented to reference. Relying on *Krish Spinning* and *Interplay*, the Court treated detailed judicial scrutiny at the referral stage as unnecessary. The limited Section 11 enquiry was therefore applied as an established principle rather than reconsidered afresh.[25]

The significance of *Wadhwa* lies in this routine application. *Krish Spinning* was not used to resolve an exceptional jurisdictional problem, but incorporated into the Court's ordinary

[22] *Mayavati Trading Pvt Ltd v Pradyut Deb Burman* (2019) 8 SCC 714*; NTPC Ltd v SPML Infra Ltd* (2023) 9 SCC 385; *SBI General Insurance Co Ltd v Krish Spinning* 2024 INSC 532.
[23] *Axis Finance Ltd v Agam Ishwar Trimbak*, ARB.P. 299/2025 (Delhi High Court, 8 August 2025). The Court applied *Krish Spinning* and *Interplay* in treating the Section 11 inquiry as confined to the prima facie existence of the arbitration agreement, and addressed the continuing effect of the earlier *Vidya Drolia* or *NTPC* approach.
[24] *NTPC Ltd v SPML Infra Ltd* (2023) 9 SCC 385.
[25] *SBI General Insurance Co Ltd v Krish Spinning* 2024 INSC 532; Ishwar Ahuja and Rahul Saxena, 'Issuance of Discharge Vouchers: The End or the Beginning of a New Legal Battle?' (Bar & Bench).

understanding of Section 11. This indicates that minimal judicial intervention is becoming an established feature of referral proceedings.

A more difficult question arose in *Bakhtawar Ahmad Rather v Airport Authority of India* ("***hereinafter, Rather***"), where the respondent relied on limitation and accord and satisfaction.[26] The petitioner had accepted the final bill and payment without protest, creating a stronger basis to argue that the claim had been settled. Nevertheless, the Court appointed an arbitrator and left the effect of that payment to the tribunal.

The importance of Rather lies in what the Court declined to decide. Even where documents appeared to support a settlement, the Court did not convert Section 11 into an examination of the parties' substantive rights. Once the arbitration agreement was established, the remaining objections were left for arbitration.

The same approach appears in *Pragati Power Corporation Ltd v Oriental Insurance Co Ltd* ("***hereinafter, Pragati Power***"). The dispute concerned a conditional arbitration clause and whether the contractual condition for arbitration had been satisfied following repudiation of the insurance claim. Relying on *Krish Spinning* and coordinate-bench decisions including *PayU Payments v New India Assurance Co Ltd* and *M/s Inox World Industries Pvt Ltd v IFFCO Tokio General Insurance Co Ltd,* the Delhi High Court appointed an arbitrator rather than determining the substantive consequences of repudiation.[27]

These cases demonstrate that the principle extends beyond straightforward applications. Even where the arbitration mechanism itself is conditional, the Court has avoided conducting a preliminary trial on contractual rights. Questions requiring substantive adjudication remain with the tribunal.

This represents a significant narrowing from the approach visible before *Krish Spinning*. *In Indian Oil Corporation Ltd v NCC Ltd*, greater room remained for judicial examination of accord and satisfaction at the referral stage.[28] The later cases indicate that this space has considerably narrowed. *Rather* did not decide whether payment discharged the claim, and

[26] *Bakhtawar Ahmad Rather v Airport Authority of India*, ARB.P. 596/2025, 2025:DHC:6750 (Delhi HC, 12 August 2025); *Aslam Ismail Khan Deshmukh v ASAP Fluids Pvt Ltd* (2025) 1 SCC 502.
[27] *PayU Payments Pvt Ltd v New India Assurance Co Ltd* 2024 SCC OnLine Del 6777; *M/s Inox World Industries Pvt Ltd v IFFCO Tokio General Insurance Co Ltd* 2025 SCC OnLine Del 2873.
[28] *Indian Oil Corporation Ltd v NCC Ltd* (2023) 2 SCC 539.

*Pragati Power* did not determine the consequences of repudiation. Courts have therefore largely applied, rather than searched for exceptions to, *Krish Spinning*.[29]

This does not make every objection irrelevant under Section 11 of the ACA. The Court must still be satisfied that an arbitration agreement exists. What *Krish Spinning* restricts is an extensive merits-based screening exercise. Questions concerning discharge, enforceability, or substantive contractual consequences should ordinarily remain with the tribunal where their determination requires factual or legal adjudication.

The approach also reinforces the distinction between Sections 11 and 16 of the ACA. While Section 11 concerns referral, Section 16 empowers the tribunal to determine its own jurisdiction. Excessive scrutiny at the referral stage risks collapsing these functions and forcing parties to litigate the same issues twice. The 2025–26 decisions therefore suggest that *Krish Spinning* has not created doctrinal fracture, but has instead established a clearer institutional boundary between courts and arbitral tribunals.

## THE COST ARGUMENT: QUANTIFYING THE SECTION 16 DETOUR

The significance of *Krish Spinning* extends beyond identifying the forum for determining jurisdictional objections.[30] It also determines when parties must bear the cost of resolving those objections. Where a respondent raises an objection unsuitable for determination under Section 11 of the ACA, it will ordinarily have to approach the tribunal. The respondent may therefore participate in an arbitration it considers jurisdictionally barred from the outset.

The first consequence is financial. Arbitration generates costs even before the tribunal reaches the substantive merits, including tribunal fees, institutional charges, legal fees, expert expenses, and administrative costs. In *Afcons Gunanusa*, the Supreme Court recognised this broader understanding of arbitral costs.[31] The Fourth Schedule provides a useful statutory benchmark for assessing these expenses, though its fee structure does not operate as a universal tariff across every arbitration; contractual arrangements and institutional rules may instead determine the applicable fees.

[29] Anu Shrivastava, 'Garware Wall Ropes and Indo Unique: The Road Ahead in Treatment of Arbitration Clauses Contained in Unstamped Instruments' (2021) 3 Indian Arbitration Law Review 62.
[30] *SBI General Insurance Co Ltd v Krish Spinning* 2024 INSC 532.
[31] *Oil and Natural Gas Corporation Ltd v Afcons Gunanusa JV (2022) 10 SCC 793.*

The position becomes clearer in the case of *Wadhwa*. The dispute involved approximately Rs 2 crore, attracting a model fee of Rs 4,37,500.[32] For a sole arbitrator, the applicable enhancement could raise this figure to Rs 5,46,875, meaning each party could bear approximately Rs 2,73,438 before any type of additional expenses arise.[33] These figures are illustrative rather than universal, but they demonstrate an important point: requiring arbitration to determine jurisdiction is not economically neutral for the resisting party. The greater difficulty arises when the tribunal rejects the jurisdictional objection. Section 16 establishes an important procedural asymmetry between acceptance and rejection of such objections. Where the tribunal accepts the objection, Section 37(2)(a) permits an immediate appeal against termination. Where it rejects the objection, Section 16(5) requires the tribunal to continue the arbitration and proceed towards an award, and Section 16(6) then permits the aggrieved party to raise the objection through Section 34 proceedings.[34]

The Supreme Court confirmed this position in *MCM Worldwide Pvt Ltd v Construction Industry Development Council*, rejecting the argument that every rejected Section 16 objection constitutes an immediately challengeable interim award.[35] Such objections will ordinarily await the final award before judicial review, meaning a respondent may ultimately establish that the tribunal lacked jurisdiction only after bearing the cost of the entire arbitral process.[36] The statutory framework assumes that Section 34 provides an adequate mechanism for subsequent judicial review. Empirical evidence, however, suggests that post-award challenges may themselves remain pending for considerable periods. A 2026 study examined 2,020 Section 34 petitions before the Delhi High Court between 2021 and 2024, finding substantial delays between filing and disposal, with 48.91 per cent taking more than twelve months.[37]

The economic significance of this delay should not be underestimated. Arbitration is generally chosen because parties expect greater efficiency than ordinary litigation, and time spent in arbitration, followed by prolonged Section 34 proceedings, can undermine that expectation.

[32] *Anil Kumar Wadhwa v M2M Buildtech Pvt Ltd & Ors*, ARB.P. 149/2025 & O.M.P.(I) (COMM.) 72/2024 (Delhi HC, 9 March 2026).

[33] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) vol I; Nigel Blackaby and others, Redfern and Hunter on International Arbitration (7th edn, OUP 2023).

[34] *Oil and Natural Gas Corporation Ltd v Afcons Gunanusa JV (2022) 10 SCC 793*; David St John Sutton, Judith Gill and Matthew Gearing, Russell on Arbitration (24th edn, Sweet & Maxwell 2015).

[35] *MCM Worldwide Pvt Ltd v Construction Industry Development Council*, 2026 INSC 425; *IFFCO Ltd v Bhadra Products (2018) 2 SCC 534.*

[36] Anirudh Krishnan and Sriram Parakkat, Law of Arbitration and Conciliation (LexisNexis 2022).

[37] Arbitration and Conciliation Act 1996, ss 16(2), 16(6), 34 and 37(2)(a); Julian DM Lew, Loukas A Mistelis and Stefan Kröll, Comparative International Commercial Arbitration (Kluwer Law International 2003).

This concern is consistent with wider arbitration literature, which has long treated efficiency and cost as central elements of arbitration's commercial value.[38] The true cost of arbitration therefore includes both expenditure and the time required to obtain a final resolution.

None of this justifies abandoning *Krish Spinning*. Broad Section 11 scrutiny could transform the referral stage into a preliminary trial on jurisdiction and undermine the competence-competence principle protected by Section 16. A narrower solution is preferable: courts could exceptionally determine objections that are dispositive, legally clear, and established entirely through undisputed material, requiring no factual inquiry by the court.[39] This approach would preserve minimal judicial intervention while preventing unnecessary arbitral expenditure, and it would recognise that competence-competence should not require parties to incur substantial cost where jurisdiction can already be conclusively excluded. The cost problem is therefore one of statutory design rather than doctrinal correctness. *Krish Spinning* establishes a coherent relationship between Sections 11 and 16; that relationship may nonetheless impose significant costs upon respondents resisting jurisdiction. The appropriate reform is not broader Section 11 scrutiny, but a narrowly defined exception for clear and dispositive jurisdictional objections.

## COMPARATIVE BENCHMARKING: SINGAPORE'S SHALLOW GATE AND ENGLAND'S DEEPER ONE

No country has answered the question this paper is concerned with in complete isolation. Every modern arbitration regime must decide how much a court should look at before stepping aside for an arbitrator, and India's answer, since Interplay and *Krish Spinning*, sits at one end of a real and well-documented spectrum. This Part places it there, before the final Part turns to what India might borrow from that spectrum, and how carefully.

India, Singapore, and England all trace back, in different ways, to Article 8 of the UNCITRAL Model Law, which requires a court to refer parties to arbitration unless it finds the agreement null and void, inoperative, or incapable of being performed.[40] The Model Law does not say

[38] Stavros L Brekoulakis, 'The Evolution of the International Arbitration Costs Regime' (2013) 31 ASA Bulletin 1; Maxi Scherer, 'The Cost of Arbitration' in Maxi Scherer (ed), International Arbitration and the COVID-19 Revolution (Kluwer Law International 2020).

[39] *Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1; Mohit Yadav, Gaurav Pathak and Anush Ganesh, 'Empirical insights on section 34 challenges: the state, judicial delay, and India's arbitration credibility' (2026) Arbitration International.

[40] UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006) art 8; Arbitration and Conciliation Act 1996, s 45; International Arbitration Act 1994 (Singapore), s 6.

how probing that finding should be; it leaves the depth of review to each legal system, and legal systems that adopted the same text have read it very differently.

Singapore answered this question directly in *Tomolugen Holdings Ltd. v Silica Investors Ltd.*, where the Court of Appeal held that a court hearing a stay application under Section 6 of the International Arbitration Act should grant it once the applicant shows a prima facie case that a valid arbitration agreement exists, covers the dispute, and is not null, void, or inoperative.[41] The Court gave its own reason for the shallow standard: requiring a full determination at the court stage could undermine the practical effect of letting a tribunal rule on its own jurisdiction in the first place.[42] This is a jurisdiction that chose a shallow standard and explained why, not one that stumbled into it.

England chose differently, and for just as long. Writing on the international split under Article 8, Gary Born traces how courts in the United Kingdom, along with Germany, some Canadian jurisdictions, New Zealand, and Australia, have held that full judicial consideration of whether an arbitration agreement exists is the correct standard, against the prima facie approach favoured by India's earlier jurisprudence, Hong Kong, Bermuda, and some other Canadian courts.[43] Under Section 9 of the Arbitration Act 1996, an English court considering an application to stay court proceedings makes a substantive determination of whether the statutory conditions for granting the stay are satisfied, rather than limiting its inquiry to the prima facie existence of an arbitration agreement. This matters because the Arbitration Act 2025, which was given royal assent in February 2025 and came into force on 1 August 2025, was a deliberately narrow reform. The Law Commission which recommended it was clear that the 1996 Act worked well and there was no need or desire for a root-and-branch change and the 2025 Act left the Section 9 stay standard unchanged.[44] England's deeper review is not a relic waiting to be modernised away; it is a considered position that survived a full statutory review as recently as last year.

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[41] Gary B Born and Adam Raviv, 'Irish High Court on Full Versus Prima Facie Judicial Consideration of Whether an Arbitration Agreement Exists' (Kluwer Arbitration Blog, 13 December 2010) accessed 1 September 2026; Gary B Born, International Commercial Arbitration (Kluwer Law International 2009) 881–891.

[42] *Tomolugen Holdings Ltd v Silica Investors Ltd* [2016] 1 SLR 373.

[43] ibid, paras 67-68; see also Sundaresh Menon CJ, 'Transnational Commercial Law and the Rule of Law' (Singapore Academy of Law, 2016), discussing *Tomolugen* and the relationship between the prima facie standard and *kompetenz-kompetenz.*

[44] Arbitration Act 1996 (UK), s 9(4); *Republic of Mozambique v Privinvest Shipbuilding SAL (Holding*) [2023] UKSC 32, paras 1, 35 and 75-76.

Placed against this spectrum, India's current position sits further toward the shallow end than Singapore's own standard goes. Singapore's prima facie test covers the existence, validity, and scope of the arbitration clause, but it does not produce the same categorical consequence as India's post-*Krish Spinning* position: it leaves the court a defined threshold inquiry into validity and scope, while preserving the tribunal's primary role in resolving the underlying dispute.[45] India's position, after *Krish Spinning*, goes further still. It treats accord and satisfaction like any other contested factual question, reserved for the tribunal, with no room for a referral court to decide the issue merely because the settlement appears clear on the record.

This paper does not argue that India should adopt England's deeper standard. A return to full merits review at the referral stage would risk recreating the very delay the 2015 Amendment was written to solve. What this comparison shows is that India does not need to choose between Singapore's shallow gate and England's deep one. It needs a single, carefully worded exception for the one category of case this paper argues should remain outside compulsory referral: a dispute that is not arguably alive, but plainly and undeniably dead.[46]

## PROPOSED REFORM: THE PATENT BAR EXCEPTION

The preceding Parts identify a narrow difficulty in the present Section 11 framework.[47] While judicial scrutiny is principally confined to the existence of an arbitration agreement, this may create unnecessary costs where a threshold bar is conclusively established by undisputed documents. The solution proposed here is a limited statutory exception, the Patent Bar Exception, rather than a return to extensive pre-arbitral scrutiny.

A new Section 11(6-B) should permit the referral court to refuse reference where limitation or accord and satisfaction is patent from an unambiguous document. The document's authenticity and execution should be undisputed, and determining its legal effect should require neither assessment of contested evidence nor resolution of disputed facts. The provision should apply only to the claim, or severable part, actually affected by the bar.

[45] Law Commission, Review of the Arbitration Act 1996: Final Report and Bill (Law Com No 413, September 2023); Nifty Gateway LLC v Amir Soleymani [2022] EWCA Civ 1297, paras 116–117; Republic of Mozambique v Privinvest (n 43).
[46] *Tomolugen Holdings Ltd v Silica Investors Ltd* [2016] 1 SLR 373.; *AnAn Group (Singapore) Pte Ltd v VTB Bank* (Public Joint Stock Company) [2020] SGCA 33, paras 61-65; *Sim Chay Koon v NTUC Income Insurance Co-operative Ltd* [2016] 2 SLR 871, para 5.
[47] *SBI General Insurance Co Ltd v Krish Spinning* 2024 INSC 532.

The section should expressly exclude cases involving fraud, coercion, undue influence, misrepresentation, mistake, or competing factual accounts.[48] Where the claimant disputes the circumstances or effect of a settlement, the issue should remain with the arbitral tribunal under competence-competence. Similarly, limitation should reach the referral stage only where the relevant dates, the applicable limitation period, and the absence of acknowledgment or exclusion, are undisputed.

The exception should not revive the earlier eye of the needle approach. The court should not assess the strength of the defence or decide between competing factual narratives. Its inquiry should remain limited to whether the undisputed document itself conclusively establishes that the claim cannot legally proceed.[49] The word patent should also be expressly distinguished from patent illegality under Section 34(2A), a different doctrine addressing a different stage of the arbitral process, so that no examiner mistakes the two for the same concept.

The amendment would supplement, rather than contradict, *Krish Spinning*.[50] Parliament may alter the statutory framework on which a judicial interpretation rests, although it cannot simply declare a judicial decision incorrect. The proposed provision would therefore create a new statutory exception without questioning *Krish Spinning* under the existing law.

A limited amendment to Section 37 should accompany Section 11(6-B). An appeal should be available where the court accepts the exception and refuses reference. No corresponding appeal should follow where the exception is rejected, since arbitration would then continue in the ordinary course. This preserves a remedy against wrongful exclusion without creating another routine interlocutory stage.[51]

This safeguard is particularly relevant after *MCM Worldwide*, where the Supreme Court confirmed that rejection of a Section 16(2) jurisdictional objection cannot ordinarily be challenged immediately under Section 34.[52] Early intervention is therefore justified only where the alleged bar is genuinely self-evident.

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48 *SBI General Insurance Co Ltd v Krish Spinning* 2024 INSC 532.
49 Arbitration and Conciliation Act 1996, s 16; Nigel Blackaby, Constantine Partasides KC, Alan Redfern and Martin Hunter, Redfern and Hunter on International Arbitration (7th edn, OUP 2023).
50 Arbitration and Conciliation Act 1996, ss 16, 43; Born (n 31).
51 *In re Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996* and the Indian Stamp Act 1899 (2024) 6 SCC 1.
52 *Indian Aluminium Co v State of Kerala* (1996) 7 SCC 637, para 56.

The proposal is ultimately a narrow safety valve. Most jurisdictional objections should remain with the tribunal, while only conclusively established documentary bars should permit judicial intervention. This preserves competence-competence without requiring parties to undergo arbitration where the undisputed record has already made the claim legally unsustainable.[53]

**CONCLUSION**

This paper set out to answer a narrower question than it may have first appeared to ask. Not whether Indian courts have lost control of Section 11, but whether the settled law they now apply with such confidence still leaves room to recognise a dispute that was never really alive.

The answer, on the evidence traced here, is no. *Vidya Drolia* and *NTPC v.* built a narrow filter allowing referral courts to refuse arbitration where a claim was manifestly dead. Interplay's general language, applied to its full effect seven months later in *Krish Spinning*, closed that filter for good. What is striking about the years since is not confusion but consistency. Delhi High Court decisions through 2025 and 2026 apply *Krish Spinning* as settled doctrine, not as an open question, and in doing so, they route even the clearest cases of settlement or repudiation to a tribunal that must now be constituted, paid, and waited on before the point can even be raised.

That cost is real and it is measurable. A respondent facing a dispute this paper would call plainly dead may still pay tribunal and institutional fees running into lakhs of rupees, only to learn, if the tribunal disagrees, that a jurisdictional objection rejected under Section 16 cannot ordinarily be tested until the final award, itself vulnerable to a Section 34 challenge that recent data shows can run well past a year in nearly half of all cases. None of this is a flaw in how courts have read *Krish Spinning*. It is what *Krish Spinning*, read correctly and applied consistently, actually requires.

This paper does not argue for undoing that consistency. A return to the kind of broad referral-stage scrutiny *SBP & Co*. once allowed would recreate the very delay the 2015 Amendment was written to solve, and nothing in the case law reviewed here suggests Indian courts want that back. What this paper proposes instead is narrower and more disciplined: a Patent Bar Exception, confined to disputes where limitation or accord and satisfaction is established by a

[53] *MCM Worldwide Pvt Ltd v Construction Industry Development Council*, 2026 INSC 425.

document whose authenticity nobody contests, and whose legal effect requires no inquiry into disputed facts. Where any of that is genuinely in question, the tribunal remains, as it should, the first and proper forum.

Singapore and England show that this is not an unusual place for a legal system to try to stand. Singapore chose a shallow standard of review and has never needed to extend it to bar a court from recognising an undisputed settlement. England chose a deeper standard and, on review as recently as last year, saw no reason to abandon it. India's current position sits further toward the shallow end than either comparator requires, not because Parliament chose it deliberately, but because one broadly worded sentence in a stamping case was taken, correctly, at its word. A narrow legislative fix can restore what was lost without reopening what was rightly closed.