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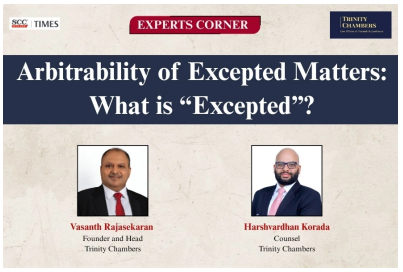

by Vasanth Rajasekaran* and Harshvardhan Korada**

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The expression "excepted matters" refers to disputes which the parties have agreed to keep outside the purview of arbitration.

Introduction

An arbitration clause is often treated as a complete submission of contractual disputes to arbitration. That assumption is not always correct. Many commercial, infrastructure, government, and insurance contracts contain arbitration clauses which are wide in form, but are cut down by exclusions or carve-outs. These exclusions are commonly described in Indian arbitration law as "excepted matters".

The expression "excepted matters" refers to disputes which the parties have agreed to keep outside the purview of arbitration. The exclusion may be express, where the contract provides that specified issues will be finally determined by a named authority. It may also arise through a contractual mechanism, where only a defined category of claims can be referred to arbitration, and the determination of whether a claim falls within that category is entrusted to a contractually defined authority.

This creates a recurring difficulty. When arbitration is invoked, the respondent may contend that the claim is not arbitrable because it falls within an excepted category. The claimant, on the other hand, may argue that this objection itself should be decided by the Arbitral Tribunal. The controversy, therefore, is not confined to the validity of excepted matters. The sharper question is: Who decides whether a dispute is an excepted matter, and at what stage?

Earlier decisions such as *Food Corpn. of India* v. *Sreekanth Transport*[1]; *Harsha Constructions* v. *Union of India*[2]; and *Mitra Guha Builders (India) Co.* v. *ONGC*[3] recognised that parties may validly exclude certain disputes from arbitration. *Indian Oil Corpn. Ltd.* v. *NCC Ltd.*[4] carried that principle forward in the context of notified claims.

However, the later decisions in *Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re*[5]; *SBI General Insurance Co. Ltd.* v. *Krish Spg.*[6]; and *Office for Alternative Architecture* v. *Ircon Infrastructure & Services Ltd.*[7] have narrowed the role of the court at the referral stage. The present position is best understood as stage-sensitive. Excepted matters remain a valid limitation on arbitral jurisdiction, but the objection will ordinarily be decided by the Arbitral Tribunal in the first instance.

Meaning of excepted matters

The Arbitration and Conciliation Act, 1996 (the Act/Arbitration Act) does not define “excepted matters”. The expression has developed through case law, particularly in contracts where the arbitration clause itself carves out certain disputes from the arbitral process.

Broadly, an excepted matter is a dispute which the parties have agreed not to refer to arbitration. This exclusion may arise in different ways. A contract may state that the decision of a particular officer, engineer, general manager, or authority shall be final. It may provide that certain claims shall not be payable or shall not be entertained. It may restrict arbitration only to claims satisfying a prescribed contractual condition. It may also require a preliminary decision by a named authority before any reference to arbitration can be made.

The underlying principle is based on party autonomy and mutual consensus. Arbitration is founded on agreement. If parties are free to submit disputes to

arbitration, they are equally free to limit that submission. In that sense, an excepted-matter clause defines the boundary of arbitral jurisdiction. A tribunal cannot finally assume jurisdiction over what the parties never agreed to arbitrate, although it may now ordinarily be the first forum to decide that jurisdictional objection.

At the same time, the label "excepted matter" cannot be mechanically accepted. A respondent cannot avoid arbitration merely by saying that a claim is barred, exaggerated, unsupported, waived or not payable under the contract. These are usually defences on merits. They become jurisdictional objections only where the contract clearly removes that category of dispute from arbitration or gives final adjudicatory authority to another contractual forum.

A plea that a claim is contractually unsustainable is not the same as a plea that the claim is contractually excluded from arbitration. The former ordinarily falls within the Tribunal's jurisdiction. The latter, if clearly established, may go to the root of the Tribunal's authority.

The classic understanding appears in the *Food Corpn. of India case*[8], where the Supreme Court recognised that, in government contracts, certain matters are often excluded from arbitration and entrusted to a departmental officer whose decision is final. The *Harsha Constructions case*[9] further clarified that even if such a dispute is referred to an arbitrator, or an issue is framed on it, jurisdiction is not created by reference. If the dispute is truly excepted, the arbitrator cannot decide it.

Thus, excepted matters operate at the intersection of party autonomy and arbitral jurisdiction. They preserve the parties' right to define the scope of arbitration, while also raising an important procedural question: Should that boundary be drawn by the court at the referral stage, or by the Tribunal in the first instance?

The traditional rule: Contractual exclusion from arbitration

The traditional rule on excepted matters rests on a simple premise. Arbitration is a creature of contract. A Tribunal derives its authority from the parties' agreement. If the parties have agreed that certain disputes will be decided by a named authority rather than by an arbitrator, that contractual

choice must ordinarily be respected.

This principle was recognised in the *Food Corpn. of India case*. The arbitration clause in that case excluded matters whose decision was expressly provided for in the contract. One such clause provided that the decision of the senior regional manager, in respect of certain losses suffered by the Corporation, would be final and binding.

The Supreme Court accepted the general proposition that excepted matters do not require adjudication by an arbitrator, since the contract itself provides the decision-making mechanism. However, on the facts, the Corporation had itself instituted civil proceedings in respect of the same claim instead of pursuing the contractual mechanism before the senior regional manager. The Supreme Court treated this as a significant circumstance and held that the Corporation had abandoned its right to rely on the excepted-matter mechanism.

The *Food Corpn. of India case*, therefore, is important for two reasons. *First*, it affirms that parties may exclude certain disputes from arbitration. *Second*, it shows that the conduct of the party relying on the exclusion may matter. A party which itself bypasses the contractual mechanism may find it difficult to later insist that the same matter was never arbitrable.

The principle was applied more directly in the *Harsha Constructions case*. There, the contract provided that disputes falling under specified clauses would be treated as excepted matters and would stand excluded from arbitration. The dispute concerned payment for extra work not covered by the contract schedule. The arbitrator nevertheless decided the issue.

The Supreme Court held that the arbitrator could not have adjudicated the dispute. Importantly, the Supreme Court clarified that jurisdiction cannot be created merely because a non-arbitrable dispute is referred to arbitration, or because an issue is framed on it. If the contract excludes a dispute from arbitration, the arbitrator cannot assume jurisdiction over it.

This position was reaffirmed in the *Mitra Guha case*. The dispute concerned levy of compensation for delay. The contract vested the Superintending Engineer with the power to determine compensation and made his decision final. The arbitration clause excluded such decisions from the arbitral forum.

The Supreme Court held that the levy of compensation was an excepted matter and could not be decided by the arbitrator. The Supreme Court again emphasised that where the parties have consciously agreed to confer finality on a named authority, the arbitrator cannot sit in appeal over that decision.

In the above context, *Oriental Insurance Co. Ltd.* v. *Narbheram Power & Steel (P) Ltd.*[10] is also relevant, although it is better understood as a case involving a conditional arbitration clause. The arbitration clause applied only where liability was admitted, and the dispute was confined to quantum. Since the insurer had repudiated liability, the Supreme Court held that the arbitration clause was not attracted.

Oriental Insurance case reinforces the broader interpretative point that an arbitration clause must be read as it is written. Courts cannot expand it on considerations of convenience, equity or presumed commercial fairness. If parties have agreed that arbitration will arise only in defined circumstances, the court must give effect to that limitation.

These decisions establish the classical doctrine. Excepted matters are not an exception to party autonomy. They are an expression of it. The parties may agree to arbitrate all disputes, some disputes, or only disputes satisfying defined contractual conditions. Once such a limitation is clear, the Tribunal's jurisdiction is correspondingly limited.

However, the traditional rule also carries an important caution. Exclusion from arbitration cannot be lightly inferred. The language of the contract must clearly and unmistakably indicate that the dispute is reserved for a named authority or otherwise removed from the scope of reference to arbitration. A mere defence that a claim is not payable under the contract does not, by itself, convert the claim into an excepted matter.

Vidya Drolia and the broader non-arbitrability framework

The law on excepted matters later became part of the broader debate on non-arbitrability. In *Vidya Drolia* v. *Durga Trading Corpn.*[11], the Supreme Court undertook a detailed review of arbitrability and explained that non-arbitrability may arise in different ways.

The Supreme Court recognised that a dispute may be non-arbitrable not

only because its subject matter is reserved for public fora or affects rights in rem, but also because the dispute is not covered by the arbitration agreement. This is where excepted matters fit into the broader framework. If the parties have excluded a category of disputes from arbitration, such disputes are not arbitrable because they fall outside the agreed scope of reference.

Vidya Drolia case is also important for its discussion on who decides non-arbitrability. The Supreme Court recognised the competence-competence principle and held that the Arbitral Tribunal is ordinarily the preferred first authority to decide questions of jurisdiction and arbitrability. At the same time, it permitted a limited prima facie review by the court at the referral stage. The referral court could refuse reference where non-arbitrability was manifest, ex facie and not reasonably arguable.

This formulation created a delicate balance. On one hand, it respected arbitral autonomy by allowing tribunals to decide jurisdictional objections in the first instance. On the other hand, it allowed courts to stop plainly non-arbitrable claims at the threshold.

Indian Oil case and *Emaar (India) Ltd.* v. *Tarun Aggarwal Projects LLP*[12] were decided against this backdrop. They reflected the then-prevailing understanding that the referral court could undertake limited threshold scrutiny where the contract itself appeared to exclude the dispute from arbitration. However, the later decisions in the *Interplay case*, *Krish Spg. case*, and *Office for Alternative Architecture case* have narrowed the role of the Section 11 court and shifted the emphasis towards tribunal-first determination.

Indian Oil v. *NCC*: The notified claims model

Indian Oil case is one of the most important modern decisions on excepted matters. The contract restricted arbitration to a defined class of claims, namely, "notified claims" included in the final bill in accordance with the contractual procedure. It further provided that the question whether a claim was a notified claim would be decided by the General Manager, and that the Arbitral Tribunal would have no jurisdiction over claims falling outside that category.

The Supreme Court held that this mechanism was not a mere procedural

requirement. It operated as a jurisdictional boundary on the arbitration agreement itself. On a conjoint reading of the relevant clauses, only notified claims included in the final bill could be referred to arbitration. The dispute whether a claim was a notified claim was itself excluded from the scope of arbitration and was required to be decided by the General Manager. Once the General Manager consciously decided that a claim was not a notified claim, such claim could not be referred to arbitration.

The decision is therefore important because it recognises that parties may validly narrow down the scope of arbitration. If the arbitration agreement covers only a specified category of claims, and excludes all others, the Arbitral Tribunal cannot finally assume jurisdiction over claims outside that contractual gateway.

At the same time, the *Indian Oil case* must now be read in light of the later decisions in the *Interplay case*, *Krish Spg. case*, and *Office for Alternative Architecture case*. The substantive principle in the *Indian Oil case* remains significant: Parties may validly exclude certain matters from arbitration. The more difficult question after these later decisions is whether that exclusion should be enforced by the referral court at the threshold, or left for the Arbitral Tribunal to examine in the first instance.

Jurisprudence post *Emaar India*

The Emaar case represents the next step in the pre-Interplay approach to excepted matters at the referral stage. The dispute arose under an agreement which contained a special mechanism for certain matters and a separate arbitration clause for other disputes.

The High Court appointed an arbitrator without examining whether the dispute fell within the excepted clause. The Supreme Court set aside the appointment order and directed the High Court to undertake a preliminary inquiry into whether the dispute fell within the excepted category or was referable to arbitration.

In doing so, the Supreme Court relied on the limited prima facie review permitted in the *Vidya Drolia case* and the approach adopted in the *Indian Oil case*. The underlying reasoning was that, where the contract itself contains a clear exclusion, the referral court may examine whether the dispute is covered by the arbitration agreement at all.

However, this approach has now been materially qualified by the later decisions in the *Interplay case*, *Krish Spg. case*, and *Office for Alternative Architecture case*.

In the *Office for Alternative Architecture case*, the Supreme Court considered and rejected reliance on *Emaar case*. The Supreme Court held that, once the court finds that an arbitration agreement exists, it should not split the claims into arbitrable and non-arbitrable parts at Section 11 stage. The correct course is to appoint the Arbitral Tribunal and leave it open to the parties to raise their objections on excepted matters before the Tribunal.

Therefore, the *Emaar case* should no longer be cited as authority for claim-wise exclusion by the referral court at Section 11 stage. Its relevance is now limited to the earlier threshold-review phase of Indian arbitration law. The present position is that, once a prima facie arbitration agreement exists, objections that certain claims fall within excepted matters should ordinarily be decided by the Arbitral Tribunal in the first instance.

Interplay and *Krish Spinning*: The shrinking scope of Section 11 review

The next shift came not directly from an excepted-matters case, but from the Supreme Court's reconsideration of the referral court's role under Section 11, Arbitration Act.

In the *Interplay case*, the seven-Judge Bench focused on arbitral autonomy, minimum judicial interference and competence-competence. Although the controversy in the *Interplay case* arose in the context of stamping, its reasoning on the limited remit of the Section 11 court has since been applied beyond stamping, including in the *Office for Alternative Architecture case*. The Supreme Court considered the scope of the referral court's inquiry under Section 11 and held that the court is concerned with the existence of a prima facie arbitration agreement, and not with other issues which may unnecessarily delay the arbitral process.

This position was carried forward in the *Krish Spg. case*. The dispute there concerned whether the execution of a discharge voucher and an alleged full and final settlement barred invocation of arbitration. The insurer contended that the claim stood discharged and that there was no arbitrable dispute left. The insured, on the other hand, alleged that the discharge was not

voluntary.

The Supreme Court held that such objections should ordinarily be examined by the Arbitral Tribunal, not conclusively by the Section 11 court. It clarified that the enquiry at the appointment stage is confined to the prima facie existence of the arbitration agreement. Once such an agreement exists, issues such as accord and satisfaction, discharge, waiver or coercion ordinarily require factual assessment and are better left to the Tribunal.

The Krish Spg. case is significant because it expressly reconsidered the earlier line of authority which permitted referral courts to weed out ex facie non-arbitrable claims in certain cases. The Supreme Court held that, after *Interplay case*, the observations in the *Vidya Drolia case*, and *NTPC Ltd.* v. *SPML Infra Ltd.*[13] permitting such threshold review could not continue to operate in the same manner, particularly in cases involving accord and satisfaction.

The combined effect of *Interplay case*, and *Krish Spg. case* is that the referral court is pushed back from adjudicating contested jurisdictional objections. This does not mean that objections based on accord and satisfaction, discharge, waiver or contractual exclusion disappear. Rather, where those objections require contractual interpretation or factual assessment, they will ordinarily be decided by the Tribunal first.

This shift has direct consequences for excepted matters. If the court's enquiry under Section 11 is limited to the existence of a prima facie arbitration agreement, it becomes difficult for the referral court to dissect claims, interpret exclusionary clauses in detail and decide which claims fall inside or outside arbitration. That exercise may require contractual interpretation, factual assessment and application of the competence-competence principle.

After the *Interplay case* and *Krish Spg. case*, therefore, the emphasis is no longer on the referral court conducting a detailed claim-wise scrutiny. The emphasis is on allowing the Arbitral Tribunal to decide, in the first instance, whether the claims before it fall within the arbitration agreement or are excluded by the contract.

Office for alternative architecture: The present position

Office for Alternative Architecture case directly applies the post-Interplay approach to excepted matters. The High Court, while appointing an Arbitral Tribunal under Section 11, had excluded certain claims on the ground that they were non-arbitrable or fell within the excepted category under the contract.

The Supreme Court set aside this part of the order. It held that once the High Court found that an arbitration agreement existed between the parties, it ought not to have split the claims into arbitrable and non-arbitrable parts at the Section 11 stage. The correct course was to appoint the Tribunal and leave the plea of non-arbitrability or excepted matters to be raised before the Tribunal.

What changes in the *Office for Alternative Architecture case* is the stage at which the objection is ordinarily decided. The Section 11 court should not, after finding that an arbitration agreement exists, undertake a claim-wise enquiry into arbitrability. The Tribunal must first decide whether the disputed claims are covered by the arbitration agreement or fall within an excepted category.

The present position, therefore, is stage-sensitive. Excepted matters remain a valid limitation on arbitral jurisdiction. However, the referral court's role in enforcing that limitation has been narrowed. The objection is not extinguished. Rather, it is deferred to the Tribunal.

Conclusion

The decisions on excepted matters can be reconciled if they are understood in a stage-sensitive manner.

Firstly, excepted matters remain valid in principle. Arbitration is consensual. Parties may agree that certain disputes will not be referred to arbitration, or that a named authority's decision on specified issues will be final. This is the continuing relevance of the *Food Corpn. of India case*, *Harsha Constructions case*, and *Mitra Guha case*.

Secondly, the exclusion must be clear. A court or Tribunal should not readily infer that parties intended to exclude a dispute from arbitration. A clause which merely provides that a claim is not payable, or that a party is not entitled to compensation, may raise a defence on merits. It does not

necessarily create an excepted matter. The language of exclusion must show that the dispute itself is outside the arbitral forum.

Thirdly, the distinction between a contractual defence and a jurisdictional exclusion must be preserved. A plea of accord and satisfaction, waiver, limitation or lack of proof ordinarily requires factual or legal assessment and is generally for the Tribunal. A plea that the contract never permitted that category of dispute to be arbitrated goes to jurisdiction. The *Indian Oil case* reflects this distinction. The Supreme Court left the disputed plea of accord and satisfaction to the Tribunal, but treated the notified-claims mechanism as a contractual boundary on arbitration.

Fourthly, the *Indian Oil case* remains important for identifying excepted matters, especially in contracts where arbitration is confined to notified claims or similar defined categories. However, its application at the Section 11 stage must now be read with the *Interplay case*, *Krish Spg. case*, and *Office for Alternative Architecture case*.

Fifthly, after the *Office for Alternative Architecture case*, the Section 11 court should ordinarily not divide claims into arbitrable and non-arbitrable categories once it finds that a prima facie arbitration agreement exists. The appropriate course is to appoint the Tribunal and leave the plea of excepted matters to be raised before it under Section 16, Arbitration Act.

This does not make excepted matters redundant. It only defers the enquiry. If the Tribunal wrongly assumes jurisdiction over a truly excepted matter, the aggrieved party may challenge the award under Section 34, Arbitration Act. The court's supervisory, albeit limited, control is therefore not removed entirely.

The present position is therefore best understood in this way: Excepted matters continue to define the outer boundary of arbitral jurisdiction, but the drawing of that boundary has, in most cases, shifted from the referral court to the Tribunal.

This preserves both contractual autonomy and the competence-competence principle, while leaving room for judicial correction at the appropriate stage.

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1. (1999) 4 SCC 491.
2. (2014) 9 SCC 246) 803 : (2014) 4 SCC (Civ) 803.
3. (2020) 3 SCC 222) 66 : (2020) 2 SCC (Civ) 66.
4. (2023) 2 SCC 539.
5. (2024) 6 SCC 1.
6. (2024) 12 SCC 1) 567 : (2025) 3 SCC (Civ) 567.
7. 2025 SCC OnLine SC 1098.
8. (1999) 4 SCC 491.
9. *Harsha Constructions v. Union of India*,(2014) 9 SCC 246 (2014) 9 SCC 246 : (2014) 4 SCC (Civ) 803.
10. (2018) 6 SCC 534) 484 : (2018) 3 SCC (Civ) 484.
11. (2021) 2 SCC 1) 549 : (2021) 1 SCC (Civ) 549.
12. (2023) 13 SCC 661.
13. (2023) 9 SCC 385.