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

\+ **ARB.P. 1625/2025**

Date of Decision**: 04.11.2025**

IN THE MATTER OF:

FLORA FOUNTAIN PROPERTIES LIMITED .....Petitioner

Through: Mr. Aayush Kuchhal, Mr. Aditya Goel and Mr. Rakshitya Goyal, Advs.

versus

ORIENT ELECTRIC LIMITED .....Respondent

Through: Ms. Srishti Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the Act), has been filed seeking appointment of a Sole Arbitrator for a dispute arising out of the Vendor Agreement dated 20.04.2024 (the Agreement).

2. It is the case of the petitioner that the respondent approached it, along with its sister concern, Comfort Infratech Limited for enhancing the respondent's presence on online platforms for sale of its products, in December, 2022. Pursuant to an arrangement between the parties, the aforesaid sister concern, issued a bank guarantee of Rs. 5,00,00,000/- (Rupees Five Crore Only) in favour of the respondent as security and the same was being renewed from time to time. It is thereafter, that the parties

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have entered into the Agreement. The respondent entered into an identical agreement with the sister concern, Comfort Infratech Limited on the same date.

3. Under the terms of the Agreement, the petitioner undertook to facilitate the sale of the respondent's products on online platforms, and the credit period for the goods supplied by the respondent would be sixty days from the date of their receipt by the petitioner; however, the respondent undertook the responsibility of liquidating any unsold stock in the inventory of the petitioner, remaining after the said credit period.

4. The petitioner claims that a lot of the respondent's goods remained unsold in its inventory and that the respondent failed to clear the same, causing financial losses to it. The petitioner also claims to have issued cheques in favour of the respondent on various dates, which were to be encashed only upon clearance of the petitioner's inventory. In view of the same, the respondent was not to act on the aforesaid bank guarantee. However, the respondent is alleged to have encashed the same on 23.06.2025.

5. The petitioner claims to have unsuccessfully demanded clearance of all dues by the respondent on 07.07.2025. Thereafter, *vide* its reply dated 30.08.2025, to the notice dated 31.07.2025 under Section 21 of the Act, the respondent refused for the appointment of arbitrator for the present dispute. Therefore, the petitioner has filed the present petition.

6. It is seen that Clause 21D of the Agreement provides for resolution of disputes by way of arbitration. The same is extracted below, for reference:

> *"21D. ARBITRATION That all dispute and differences arising out of or in connection with or relating to the present Agreement shall be settled under the Rules of Delhi International Arbitration Centre by a sole arbitrator*

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mutually appointed by both Parties in accordance with its rules. The decision or award so given by the appointed arbitrator shall be final and binding on the parties hereto. The arbitration procedure shall be conducted in English language. The place & seat of Arbitration procedure shall be Delhi International Arbitration Centre, New Delhi. All expenses incurred in arbitration proceedings towards administrative cost, arbitrator's fees or any other expense shall be borne equally by both the parties."

7. Learned counsel appearing for the respondent points out certain discrepancies in the affidavit filed along with the petition. The said objection is technical in nature and cannot be a ground for rejection of the petition.

8. In the detailed reply filed by the respondent, it is alleged that the disputes involved in the present petition do not fall under the scope of Clause 21D of the Agreement. However, the existence of the Agreement or Clause 21D therein, is not denied.

9. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the Act has been fairly well settled. This Court in ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd***[1], has extensively dealt with the scope of interference at the stage of Section 11 reference. Furthermore, this Court, in ***Axis Finance Limited Vs. Mr. Agam Ishwar Trimbak***[2] has held that the scope of inquiry under Section 11 of the Act is limited to a *prima facie* examination of the *existence* of an arbitration agreement. Further, it was also reiterated that objections relating to arbitrability of disputes are not to be entertained by a referral Court acting under Section 8 or 11 of the Act. The relevant extract of the aforesaid decision reads as under:-

19.In In Re: Interplay , the Supreme Court confined the analysis under

[1] 2025 SCC OnLine Del 3022
[2] 2025:DHC:7477

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Section 11 of the Act to the existence of an arbitration agreement and under Section 8 of the Act to the existence and validity of an arbitration agreement. Under both the provisions, examination was to be made at the touchstone of Section 7 of the Act. Further, issues pertaining to the arbitrability of the dispute fell outside the scope of both Section 11(6A) and Section 8 of the Act. The material part of the judgement of the Supreme Court in In Re: Interplay reads as under:

> *164. The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. Where Section 8 requires the referral Court to look into the prima facie existence of a valid arbitration agreement. Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement. Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration Act allows an appeal from the order of an arbitral tribunal refusing to refer the parties to arbitration under Section 8, but not from Section 11. Thus, the 2015 Amendment Act has legislatively overruled the dictum of Patel Engineering (supra) where it was held that Section 8 and Section 11 are complementary in nature. Accordingly, the two provisions cannot be read as laying down a similar standard. 165. The legislature confined the scope of reference under Section 11(6A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In Duro Felguera (supra), this Court held that the referral Courts only need to consider one aspect to determine the existence of an arbitration agreement – whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6A) should be confined to the existence of an arbitration agreement on the basis of Section 7Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to*

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be decided by arbitral tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia (supra) in the context of Section 8 and Section 11 of the Arbitration Act. 166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competencecompetence, only prima facie proof of the existence of an arbitration agreement must be adduced before the referral Court. The referral Court is not the appropriate forum to conduct a minitrial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the arbitral tribunal. This position of law can also be gauged from the plain language of the statute. 167. Section 11(6A) uses the expression "examination of the existence of an arbitration agreement." The purport of using the word "examination" connotes that the legislature intends that the referral Court has to inspect or scrutinize the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. On the other hand, Section 16 provides that the arbitral tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the referral Court is only required to examine the existence of arbitration agreements, whereas the arbitral tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd." [Emphasis supplied]

20. The effect of In Re: Interplay was further explained by a Three Judge Bench of the Supreme Court in SBI General Insurance Co. Ltd. v. Krish Spinning[3] *wherein the Court declared Vidya Drolia and NTPC Ltd.'s findings qua scope of inquiry under Section 8 and Section 11 of the Act to no longer be compatible with modern principles of arbitration. The material portions of the judgement read as under:*

"114. In view of the observations made by this Court in In Re : Interplay (supra), 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.

[3] 2024 SCC OnLine SC 1754

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For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (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). ... 118. Tests like the "eye of the needle" and "ex-facie meritless", although try to minimise the extent of judicial interference, yet they require the referral Court to examine contested facts and appreciate prima facie evidence (however limited the scope of enquiry may be) and thus are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal." [Emphasis supplied]

21. Similarly, in BGM and M-RPL-JMCT (JV) v. Eastern Coalfields Ltd[4] *the Supreme Court succinctly explained the effect of In Re: Interplay on a Referral Court's powers under Section 11 of the Act. The relevant part of the judgement is as under:*

15. ...

(a) Section 11 confines the Court's jurisdiction to the examination regarding the existence of an arbitration agreement.

(b) The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination.

(c) Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Such a legal approach will help the Referral Court in weeding out prima facie non-existent arbitration agreements.

(d) The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. However, the expression "examination" does not connote or imply a laborious or contested inquiry.

(e) The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. Only prima facie proof of the existence of an arbitration

[4] 2025 SCC OnLine SC 1471

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> *agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal.*
>
> *(f) Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, when the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award is bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth.*
>
> *[Emphasis supplied]*
>
> *22. Thus from the above-mentioned authorities it is clear that a Court's scope of inquiry under Section 11 of the Act has been limited to a prima facie examination of the existence of an arbitration agreement while the adjudication under Section 8 is to be made for both existence and validity. Further, the examination so undertaken under both the said provisions must be within the confines of Section 7 of the Act. Objections relating to arbitrability of disputes are not to be entertained by a referral Court acting under Section 8 or 11 of the Act."*

10. Therefore, in view of the existence of dispute between the parties and an arbitration clause in the Agreement, Mr. Burujupati Sidhi Pramodh Rayudu, Advocate (Mobile No.9951314975, e-mail id: bsprayudu@gmail.com) is appointed as the Sole Arbitrator.

11. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12 of the Act.

12. The Sole Arbitrator shall be entitled to fees in accordance with the IV Schedule of the Act or as may otherwise be agreed to between the parties

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and the learned Sole Arbitrator.

13. The parties shall share the arbitrator's fees and arbitral costs, equally.

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

15. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy. All rights and contentions of the parties in this regard are reserved. Let a copy of the instant order be sent to the Sole Arbitrator through electronic mode as well.

16. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 4, 2025/p/amg

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