



2025:DHC:3614



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ ARB.P. 369/2025

Date of Decision: **06.05.2025****IN THE MATTER OF:**

TATA CAPITAL LTD

.....Petitioner

Through: Mr. Rajat Katyal, Ms. Ruchika, Mr.  
Sparsh Agarwal, Advs.

versus

DINESH VASWANI

.....Respondent

Through: None.

**CORAM:****HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV****ORDER****PURUSHAINDR KUMAR KAURAV, J. (ORAL)**

1. Heard learned counsel for the petitioner. She has placed on record the affidavit of service which reads as under:

***"AFFIDAVIT***

*I, Ruchika, D/o Suresh Lakra, aged about 26 years, counsel for the Petitioner in the present matter, having office at F-15, Kailash Colony, New Delhi 110048, do hereby solemnly affirm and declare as under:*

- 1. That vide order dated 01.04.2025 notice was directed to be issued to the Respondent. In compliance of the order dated 01.04.2025, copy of the notice along with copy of the Petition was attempted to be served upon the Respondent, by Speed Post, Registered Post and Email.*

**Service by Email:**



2. That a copy of the petition was sent to Respondent via email dated 25.04.2025 sent from the email-id of the office of the counsel for the Petitioner i.e., [advocate10@katyalassociates.com](mailto:advocate10@katyalassociates.com) at the E-mail ID of the Respondent i.e., [dvaswani@aol.in](mailto:dvaswani@aol.in) as mentioned at the E-mail ID of the Respondent i.e., [dvaswani@aol.in](mailto:dvaswani@aol.in) as mentioned in the loan agreement and Memo of Parties. It is submitted that no failure/ bounce-back message has been received at the abovementioned e-mail of the office of the counsel ([advocate10@katyalassociates.com](mailto:advocate10@katyalassociates.com)). Copy of the Email dated 25.04.2025 is Document A.

**Service by Speed Post:**

3. It is submitted that on 24.04.2025 a copy of the petition was duly sent by Speed Post, via Consignment No. SU002075063IN, at the address of the Respondent as mentioned in the Memo of Parties. It is submitted that as per the internet generated tracking report, the said consignment was reported as delivered to the Respondent on 28.04.2025 and thus service by Speed Post as per the tracking report was complete. Proof of Dispatch by Speed Post along with Speed Post tracking Report is Document B.

**Service by Courier:**

4. It is submitted that on 24.04.2025 a copy of the Petition was duly sent by Courier, via Consignment No. DEL203683037, at the address of the Respondent as mentioned in the Memo of Parties. It is submitted that as per the internet generated tracking report, the said consignment was reported as delivered to the Respondent on 26.04.2025 and thus service by Courier as per the tracking report was complete. Proof of Dispatch by Courier along with Courier tracking Report is Document C. –(Colly)

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DEPONENT”

2. A perusal of the aforesaid would indicate that the service has been made upon the respondent through speed post, besides other modes as well. However, there is no appearance on behalf of the respondent.

3. It is seen from the petition that a Loan cum Hypothecation agreement (*hereinafter referred to as loan agreement*) was executed between the parties on 07.01.2020, and, thereafter, an amount of Rs. 10,00,000/- was disbursed to respondent no.1, whereas respondent no.2 stood as co-borrower.

4. The facts further indicate that on commission of default by the



respondents, the petitioner recalled the loan facility on 08.08.2024. The petitioner, subsequently, issued notices to the respondents directing respondents to clear the outstanding dues. However, despite the said notices no response was received from the respondents. As per the petition, as of 07.08.2024, an amount of Rs. 32,26,121/- is due from the respondents. Therefore, the petitioner invoked arbitration *vide* notice dated 22.08.2024. Under the aforesaid circumstances, the petitioner has approached this Court by way of the instant petition.

5. The Court has perused Clause 9 of the loan agreement dated 07.01.2020, which mandates arbitration in case any dispute arises and the same reads as under:

*“9. Arbitration*

*If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held at the place as mentioned at Serial No. 13 of Annexure 1 hereto in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the Obligors.”*

6. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. This Court as well in the order dated 24.04.2025 in case of ARB.P. 145/2025 titled as ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd*** has extensively dealt with the scope of interference at the stage of Section 11. The Court held as under:-



9. *The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. The Supreme Court in the case of **SBI General Insurance Co. Ltd. v. Krish Spinning**,<sup>1</sup> while considering all earlier pronouncements including the Constitutional Bench decision of seven judges in the case of **Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re**<sup>2</sup> has held that scope of inquiry at the stage of appointment of an Arbitrator is limited to the extent of prima facie existence of the arbitration agreement and nothing else.*

10. *It has unequivocally been held in paragraph no.114 in the case of **SBI General Insurance Co. Ltd** that observations made in **Vidya Drolia v. Durga Trading Corpn.**,<sup>3</sup> and adopted in **NTPC Ltd. v. SPML Infra Ltd.**,<sup>4</sup> 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 not apply after the decision of **Re: Interplay**. The abovenoted paragraph no.114 in the case of **SBI General Insurance Co. Ltd** reads 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. 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).”*

11. *Ex-facie frivolity and dishonesty are the issues, which have been held to be within the scope of the Arbitral Tribunal which is equally capable of deciding upon the appreciation of evidence adduced by the parties. While considering the aforesaid pronouncements of the Supreme Court, the Supreme Court in the case of **Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd.**,<sup>5</sup> however, has held that the referral Courts under Section 11 must not be misused by one party in order to force other parties to the arbitration agreement to participate in a time-consuming and costly arbitration process. Few instances have been delineated such*

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<sup>1</sup> 2024 SCC OnLine SC 1754.

<sup>2</sup> 2023 SCC OnLine SC 1666.

<sup>3</sup> (2021) 2 SCC 1.

<sup>4</sup> (2023) 9 SCC 385.

<sup>5</sup> (2025) 2 SCC 192



as, the adjudication of a non-existent and malafide claim through arbitration. The Court, however, in order to balance the limited scope of judicial interference of the referral Court with the interest of the parties who might be constrained to participate in the arbitration proceedings, has held that the Arbitral Tribunal eventually may direct that the costs of the arbitration shall be borne by the party which the Arbitral Tribunal finds to have abused the process of law and caused unnecessary harassment to the other parties to the arbitration.

12. It is thus seen that the Supreme Court has deferred the adjudication of aspects relating to frivolous, non-existent and malafide claims from the referral stage till the arbitration proceedings eventually come to an end. The relevant extracts of **Goqii Technologies (P) Ltd.** reads as under:-

**“20.** As observed in *Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754 : 2024 INSC 532]* , frivolity in litigation too is an aspect which the referral court should not decide at the stage of Section 11 as the arbitrator is equally, if not more, competent to adjudicate the same.

**21.** Before we conclude, we must clarify that the limited jurisdiction of the referral courts under Section 11 must not be misused by parties in order to force other parties to the arbitration agreement to participate in a time consuming and costly arbitration process. This is possible in instances, including but not limited to, where the claimant canvasses the adjudication of non-existent and mala fide claims through arbitration.

**22.** With a view to balance the limited scope of judicial interference of the referral courts with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration. Having said that, it is clarified that the aforesaid is not to be construed as a determination of the merits of the matter before us, which the Arbitral Tribunal will rightfully be equipped to determine.”

13. In view of the aforesaid, the scope at the stage of Section 11 proceedings is akin to the eye of the needle test and is limited to the extent of finding a prima facie existence of the arbitration agreement and nothing beyond it. The jurisdictional contours of the referral Court, as



*meticulously delineated under the 1996 Act and further crystallised through a consistent line of authoritative pronouncements by the Supreme Court, are unequivocally confined to a prima facie examination of the existence of an arbitration agreement. These boundaries are not merely procedural safeguards but fundamental to upholding the autonomy of the arbitral process. Any transgression beyond this limited judicial threshold would not only contravene the legislative intent enshrined in Section 8 and Section 11 of the 1996 Act but also risk undermining the sanctity and efficiency of arbitration as a preferred mode of dispute resolution. The referral Court must, therefore, exercise restraint and refrain from venturing into the merits of the dispute or adjudicating issues that fall squarely within the jurisdictional domain of the arbitral tribunal. It is thus seen that the scope of enquiry at the referral stage is conservative in nature. A similar view has also been expressed by the Supreme Court in the case of **Ajay Madhusudan Patel v. Jyotrindra S. Patel**<sup>6</sup>.*

7. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, accordingly, Mr. Abhishek Mahajan (Mobile No: +91 9810981062, Email: officeofabhishekmahajan@gmail.com ) is appointed as the sole Arbitrator.
8. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.
9. The learned arbitrator is also requested to file the requisite disclosure under Section 12 (2) of the Act within a week of entering on reference.
10. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.
11. 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.
12. Let the copy of the said order be sent to the newly appointed

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<sup>6</sup> (2025) 2 SCC 147.



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Arbitrator through the electronic mode as well.

13. The petition stands disposed of in the aforesaid terms.

**PURUSHAINDR KUMAR KAURAV, J**

**MAY 6, 2025/aks/mj**