



\$~O-14

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

+ **ARB.P. 583/2025**

Date of Decision: **06.05.2025**

IN THE MATTER OF:

TATA POWER RENEWABLE ENERGY LIMITEDPetitioner

Through: **Mr. Anand Kumar Shrivastava, Ms. Ishita Jain, Mr. Ankit Bhandari and Mr. Ekshat Punwani, Advs.**

versus

DCM TEXTILES LIMITED

.....Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. Heard learned counsel for the petitioner.
2. Learned counsel for the petitioner has filed the service affidavit which reads as under:

“I, Ankit Bhandari, aged about 29 years, S/o Shri Narendra Kumar Bhandari, Advocate of the Petitioner, having my office at B-7 /8, Ground Floor, Safdarjung Enclave, New Delhi-II 0029, do hereby solemnly affirm as under:

1 . That the Deponent is one of the counsels of the Petitioner in the captioned matter and as such is well conversant with the facts of the present case and is thus competent to swear this affidavit.

2. That the present case was listed for hearing on 02.04.2025 before the Hon'ble High Court of Delhi and the Hon'ble Justice was pleased to issue Notice to Respondent (DCM Textiles Limited) herein vide order dated



2025:DHC:3616



02.04.2025. The true copy of the order dated 02.04.2025 is annexed herewith and marked as Annexure-1.

3. That in compliance of the order dated 02.04.2025, the counsel on behalf of the Petitioner herein have duly served the notice along with a copy of the Petition by speed post, courier and email to the Respondent on its office address in Hisar i.e. DCM Textiles Limited (A unit of DCM Nouvelle Limited) having its office at Post Box No. 59, New Mela Ground, Hisar-125001, New Delhi-110003 (“Respondent Address”).

4. That the details of the speed post-delivery is set out in the table below:

S. No.	Respondent	Speed Post No.	Dispatched Date	Delivered Date
1.	DCM Textiles Limited (A unit of DCM Nouvelle Limited) having its office at Post Box No. 59, Near Mela Ground, Hisar-125001	SU00156658 2IN	17.04.2025	23.04.2025

A true copy of the postal receipt along with tracking report showing confirmation of delivery dated 23.04.2025 is annexed herewith and marked as Annexure-2.

5. That the details of the courier delivery is set out in the table below:-

S. No.	Respondent	Courier No.	Dispatched Date	Delivered Date
1.	DCM Textiles Limited (A unit of DCM Nouvelle Limited) having its office at Post Box No. 59, Near Mela Ground, Hisar-125001	DEL203680548	17.04.2025	19.04.2025

A true copy of the courier receipt along with its tracking and delivery confirmation dated 19.04.2025 report are annexed herewith and marked



as Annexure-3.

6. The counsels on behalf of the Petitioner herein have also served the notice along with a copy of the Petition to the Respondent vide email dated 21.04.2025 on the last known email addresses i.e. kaushal.vivek@dcmtextiles.com The True copy of the service done by email dated 21.04.2025 is annexed herewith and marked as Annexure- 4.

7. That I state that the service stands completed on the Respondent.

-sd-

DEPONENT”

3. The affidavit indicates that besides other modes, the service has been effected on the respondent through speed post as well. However, none appears on behalf of the respondent.

4. The facts of the case would indicate that the respondent issued various Purchase Orders (POs) to the petitioner for Design, Supply, Installation and Commissioning of "DC Ground Mounted Solar PV Plant" of 9979.20 KWp and 2400.00 KWp, and Design, Supply, Installation and Commissioning of DC Roof Top Solar PV of 2100.00 KWp.

5. Furthermore, the petitioner submits that the work commenced and it adhered to the contractual obligations. However, the project could not be completed within timelines stipulated under the POs, due to reasons such as:

- a. Delay in Site Handover.
- b. Canal Overflow
- c. Material Theft at site
- d. Non-clearance of 2nd patch of land
- e. Delay due to Covid-19.

6. Despite facing various difficulties, the petitioner claims to have successfully completed the project. However, the respondent failed to pay the due amount for the work carried out by the petitioner.



7. Thereafter, as per the petitioner, there were various exchanges of communications between the parties. The petitioner, then, contends that the respondent *vide* letter dated 15.11.2024 has arbitrarily and without any legal contractual basis demanded payment amounting to Rs. 88,49,554/-, for a purported delay of six weeks in handing over the site. The petitioner, then, contends that the aforesaid demand is illegal and improper.

8. The petitioner, therefore, invoked Clause 26 of the POs which stipulates that any dispute arising out or in relation to the POs shall be referred to and finally decided by the arbitration under the provision of Arbitration and Conciliation Act, 1996 (*hereinafter the 1996 Act*).

9. The Court has perused Clause 26 of the POs which reads as under:

“26. Arbitration :-

Any dispute, including claims seeking redress or asserting rights under applicable law, shall be resolved and finally settled in accordance with the provisions of the arbitration and conciliation act 1996, as may be amended from time to time of its reenactment. The seat of arbitration shall be in Delhi India. All proceeding of arbitration shall be held in English.”

10. 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 the 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**,¹ 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***

¹ 2024 SCC OnLine SC 1754.



*Stamp Act, 1899, In re*² 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.**,³ and adopted in **NTPC Ltd. v. SPML Infra Ltd.**,⁴ 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.**,⁵ 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 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.

² 2023 SCC OnLine SC 1666.

³ (2021) 2 SCC 1.

⁴ (2023) 9 SCC 385.

⁵ (2025) 2 SCC 192.



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*⁶.

11. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, the Court appoints Mr. Shantanu Sharma, Advocate (Mob No. +91 9755922222, Email-shantanusharma862@gmail.com) as the Sole Arbitrator to adjudicate the same.
12. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as “A&C Act”).
13. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
14. The parties shall share the arbitrator's fee and arbitral cost, equally.
15. All rights and contentions of the parties in relation to the claims/counterclaims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.
16. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy between the parties. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.
17. Accordingly, the instant petition stands disposed of

PURUSHAINDR KUMAR KAURAV, J

MAY 6, 2025/aks/mjo

⁶ (2025) 2 SCC 147.