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

\+ **ARB.P. 516/2025**

Date of Decision**: 07.11.2025**

IN THE MATTER OF:

S.H. ASSOCIATES INDIA PVT. LTD. .....Petitioner

Through: Mr. Mukesh Sharma, Mr. Dinesh Sharma and Mr. Mohit Nagar, Advs.

versus

BHAMBRI SOLAR PVT. LTD. & ANR. .....Respondents

Through: Mr. Manish Shukla and Mr. Aditya Shukla, Advs. for R-1.
Mr. Suhael Buttan, Mr. Vineet Kumar, Mr. Shryerhth Ramesh Sharma and Ms. Tanishka Khatana, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The dispute has arisen out of Contract dated 29.03.2024 *(the Contract)* executed between the petitioner and respondent No.1. The petitioner asserts that under the terms of the Contract, respondent No. 1 undertook works concerning supply, installation, testing, and commissioning of a solar power plant at the premises of WWF-India, situated at 172 B, Lodhi Estate, New Delhi. The solar modules concerned in the aforesaid Contract, were to be of respondent no. 2.

2. It is the petitioner's case that respondent no. 1 failed to fulfill its obligations under the Contract, leading to significant financial losses and operational disruptions to the petitioner.

3. Clause 6.11 of the Contract provides for resolution of disputes through arbitration upon an unsuccessful attempt at amicable settlement.

> *"6.11 ARBITRATION*
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> *If any dispute or difference shall arise between Client and the Contractor, either during the performance or after completion of the Works, or after termination of the Contractor's employment, or breach of this Contract, as to:-*
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> *(a) The construction of this Contract, or (b) Any matter or thing of whatsoever nature arising under this Contract, or (e) The withholding by Client of any benefit to which the Contractor may claim to be entitled, Then such dispute shall be settled amicably between the parties. Any such dispute or differences which cannot be settled amicably shall be referred to the consultant as arbitrator. Final decision of the arbitrator will be accepted by both parties.*
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> *All cost of arbitration and fees will be decided by the arbitrator and shall be borne by both parties equally.*
>
> *Before commencing arbitration, the party wishing to have recourse to arbitration shall serve a notice to that effect upon the other party. Such notice shall establish the entitlements of the party giving the same is commence arbitration but no arbitration proceedings shall be commenced unless amicable settlement cannot be reached.*
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> *Such reference to arbitration shall not be commenced until after the Completion or alleged completion of the Works or termination or alleged termination of this Contract, or abandonment of the Works, unless with the written consent of Client and the Contractor.*
>
> *The arbitration shall be held at the premises of the arbitrator using the facilities and assistance available at his premises and shall be conducted in accordance with the rules set under the Indian Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force.*

The arbitrator shall have power to review and revise any certificate. opinion, decision, requisition or notice and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given in the same manner as if no such certificate, opinion, decision, requisition or notice had been given.

Upon every or any such reference the costs of and incidental to the reference and award shall be in the discretion of the arbitrator who may determine the amount thereof, or direct the amount to be taxed as between solicitor and Client or as between party and party and shall direct by whom and to whom and in what manner the same be borne and paid.

The award of the arbitrator shall and binding on the parties."

4. The petitioner has placed on record, letter dated 12.11.2024 *vide* which the petitioner requested amicable settlement of the dispute. However, no settlement has been arrived at.

5. Clause 21 of the Techno-Commercial Proposal for Installation of Grid Connected Solar Rooftop Power Plant dated 02.04.2024 *(the Proposal)*, under which respondent no. 2 was to provide services with respect to the solar power plants, also provides for arbitration. The said clause is extracted below, for reference:

*"**21. 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 or its reenactment. The arbitral tribunal shall be composed of two arbitrators to be appointed by each of the parties and the third arbitrator shall be appointed by the arbitrators appointed by the parties and for such arbitration, the seat of arbitration shall be in New Delhi, India. All proceedings of arbitration shall be held in English."

6. 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, in ***Axis Finance Limited v. Mr. Agam Ishwar Trimbak,***[2] this Court 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 the 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 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:*
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> > *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*

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

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 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 competence competence, 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. 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.

[3] 2024 SCC OnLine SC 1754
[4] 2025 SCC OnLine SC 1471

(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 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."

7. In view of the fact that disputes have arisen between the parties and there are arbitration clauses in the Contract and the Proposal, Mr. Dhruv Arora, Advocate (Mobile No. 9810012712, e-mail id: advda14@gmail.com) is appointed as the Sole Arbitrator.

8. 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.

9. The Sole Arbitrator shall be entitled to fee in accordance with the IV Schedule of the Act or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

10. The parties shall share the arbitrator's fee and arbitral cost, equally.

11. 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.

12. 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.

13. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 7, 2025/p/amg