



2025:DHC:3942



\$-4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 222/2025**

Date of Decision: **08.05.2025**

IN THE MATTER OF:

M/S MONEYWISE FINANCIAL SERVICES PVT. LTD

.....Petitioner

Through: Ms. Preeti Kumari, Advocate.

versus

M/S ISHWARI HEALTH CARE PVT LTD AND ORS

.....Respondent

Through:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

JUDGEMENT

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

1. Affidavit of service reads as under:

"1. That I am the Counsel of the Petitioner Company in the present petition and as such I am fully competent to swear this affidavit.

2. That the notice issued by the Hon'ble Delhi High Court all the Respondents on behalf of the Petitioner Company through e-mail accounts@ishwarihealthcare.com, info@ishwarihealthcare.com, purchase@ishawarihealthcare.com, export@ishwarihealthcare.in, shatrughan@ishwarihealthcare.com on 06.05.2025 via e-



mail i.e advocatepreetyllm@gmail.com. The said e-mail has not bounced back and has been duly served upon the respondents. The copy of the e-mail is annexed herewith as Annexure A.

3. That I have also served the copy of notice through my whatsapp mobile No.9711615978 to the mobile no of the respondent i.e. 9820583410. The copy of the screenshot is annexed herewith as Annexure B.

4. That notice issued by this Hon'ble Delhi High Court were duly served to the Respondent No.1 on behalf of the Petitioner Company via speed post and Courier to the following addresses:

Sr. No.	Address	Speed post	Courier
1.	52, Whispering Palm Center, Lokhandwala Township, Akurli i Road, Kandivali (E), Mumbai, Maharashtra-400101	SERVED	NOT SSERVED
2	Plant No. 7-7A, Building No.5, Shiv Shambhu Industrial Estate, OffNH 8, Valiv Vasai (E), District Thane, Maharashtra-401208	NOT SERVED	NOT SERVED

5. That I have sent the notice issued by this Hon'ble Court to the Respondent No.2 on behalf of the Petitioner Company via Speed post and Courier to the following addresses:

S.No.	Address	Speed post	Courier
1.	Flat No.1101, Eleventh Floor Tower No.1, Spring Grover, Building No.2, CTS No.17111A/60, Akurli Road, Kandivali (E) Mumbai Maharashtra-400101.	NOT SERVED	NOT SERVED
2	6/B 702, Alike Nagar, Akurli Road, Near Lokanhndwala Foundation School, Lokhandwala Township, Kandiwali East, Mumbai, Maharashtra-400101	NOT SERVED	NOT SERVED



6. *That I have sent the notice issued by this Hon'ble Court to Respondent No.3 on behalf of the Petitioner Company via Speed post and Courier to the following addresses:*

<i>S.No.</i>	<i>Address</i>	<i>Speed Post</i>	<i>Courier</i>
<i>1</i>	<i>Flat No.1101, Eleventh Floor Tower No.1, Spring Grover, Building No.2, CTS No.17111A/60, Akurli Road, Kandiwali (E) Mumbai Maharashtra-400101.</i>	<i>NOT SERVED</i>	<i>NOT SERVED</i>
<i>2</i>	<i>6/B 702, Alike Nagar, Akurli Road, Near Lokanhdwala Foundation School, Lokhandwala Township, Kandiwali East, Mumbai, Maharashtra-400101</i>	<i>NOT SERVED</i>	<i>NOT SERVED</i>

7. *That the Postal Receipts, Courier Receipts along with their tracking reports are annexed herewith Annexure C."*

2. Learned counsel for the petitioner submits that the email ID on which the notice has been served is part of the Agreement. She also submits that whatsapp number has been obtained from various correspondences between the parties. As no one appears on behalf of the respondent, the Court proceeds to decide the matter on the basis of facts and averments made by the petitioner.

3. The facts of the case indicate that, the petitioner is a registered Non-Banking Financial Company (NBFC) incorporated under the provisions of the Companies Act, 1956, having its registered office at 11/6 B, Shanti Chambers, Pusa Road, New Delhi 110005. The petitioner asserts that it is engaged in providing a broad spectrum of loan services, including loans against property, unsecured business and personal loans, financing for SME receivables, medical equipment financing, and IPO funding. These services



are claimed to cater to the growing credit needs of its clientele, both domestically and internationally. According to the petitioner, respondent No.1, Ishwari Healthcare Private Limited, a private limited company having its registered office at 52, Whispering Palm Center, Lokhandwala Township, Akurli Road, Kandivali (East), Mumbai, Maharashtra 400101 approached the petitioner seeking a loan facility. Respondents No.2 and No.3, stated to be directors of respondent No.1 and responsible for its day-to-day affairs, are also parties to the transaction.

4. The petitioner contends that the respondents requested a loan facility of Rs. 35,35,807/- (Rupees Thirty-Five Lakhs Thirty-Five Thousand Eight Hundred and Seven only) for the purpose of business expansion and provided assurances of timely repayment along with applicable interest. Relying on these representations, the petitioner sanctioned the loan. However, it is alleged that the respondents failed to honour their repayment obligations despite repeated demands and issuance of a legal notice.

5. The petitioner further states that, owing to the default, a notice of reference under Section 21 of the Arbitration and Conciliation Act, 1996 (1996 Act), was issued to the respondents *via* speed post on 07.11.2024 and via email on 29.10.2024. As of 24.10.2024, the respondents are claimed to have defaulted on repayment, with the outstanding dues amounting to Rs.8,56,120/- (Rupees Eight Lakhs Fifty-Six Thousand One Hundred and Twenty only). The petitioner alleges that the respondents have thereby breached the terms of the loan agreement dated 19.10.2020 and made false assurances regarding repayment.

6. Subsequently, the instant petition was filed with the following prayer :



“a) Allow the present petition and appoint sole arbitrator in terms of the loan agreement dated 15.01.2019 for adjudication of the dispute between the parties.”

7. Clause 10.1 of the Loan Agreement dated 19.10.2020 reads as under:

“10.1 "Any disputes, differences, controversies and questions directly or indirectly arising at any time hereafter between the Parties or their respective representatives or assigns, arising out of or in connection with this Agreement (or the subject matter of the Agreement), including, without limitation any question regarding its existence, validity, interpretation, construction, performance, enforcement, rights and liabilities of the parties, or termination("Dispute. '), shall be referred to Sole arbitrator duly appointed by the lender. The Language of the arbitration shall be English. The seat of the Arbitration shall be at New Delhi and the language of the proceedings shall be English. The Award shall be in writing and shall set out the reasons for the Arbitrator's decision. The costs and expenses of the Arbitration shall be borne equally by each Party, with each cost and expenses of the Arbitration shall be borne equally by each party, with each party paying for its own fees and costs including attorney fees, except as may be determined by the arbitral tribunal. Any award by the Arbitration tribunal shall be final and binding.”

8. 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**, 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*¹ 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.**,² and adopted in **NTPC Ltd. v. SPML Infra Ltd.**,³ 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.**,⁴ 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

¹ 2023 SCC OnLine SC 1666.

² (2021) 2 SCC 1.

³ (2023) 9 SCC 385.

⁴ (2025) 2 SCC 192.



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**⁵”.*

9. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.
10. The Court appoints Ms. Kaarunya Lakshmi, Advocate (Mobile No.+91 8586801514, Email id- kaarunya38@gmail.com) as the Sole Arbitrator to adjudicate the dispute between the parties.
11. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the 1996 Act.
12. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the 1996 Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
13. The parties shall share the arbitrator's fee and arbitral cost, equally.
14. All rights and contentions of the parties in relation to the claims/counterclaims are kept open, to be decided by the Sole Arbitrator on

⁵ (2025) 2 SCC 147.



2025:DHC:3942



their merits, in accordance with law.

15. 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 Arbitrator through the electronic mode as well.

16. Accordingly, the instant petition stands disposed of.

MAY 08, 2025

ssc

PURUSHAINDRA KUMAR KAURAV, J

Click here to check corrigendum, if any