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

\+ ARB.P. 195/2025

Date of Decision: **10.10.2025**

IN THE MATTER OF:

RAJENDRA MITTAL CONSTRUCTION CO. PVT. LTD
210-211, OPTUS CORPORATE SUITES, VASUNDRA NAGAR, OPPOSITE ASHIANA VILLAGE, BHIWADI, TIJARA, ALWAR, RAJASTHAN-301019
THROUGH MR. RAVINDRA KUMAR SINGH, DIRECTOR
.....PETITIONER

Through: Mr. Udit Seth and Mr. Divyanshu, Advs.

versus

1. **KESHORAM MANUFACTURING PVT. LTD**
63, UPPER GROUND FLOOR, SANDESH VIHAR, PITAM PURA, SHAKUR PUR I BLOCK, NORTHWEST, DELHI, NEW DELHI - 110034
THROUGH MR. VIKAS GOEL, DIRECTOR

2. **KESHO PACKAGING PVT. LTD.**
PLOT NO.63, SANDESH VIHAR, PITAM PURA, NORTH DELHI, DELHI, NEW DELHI - 110034
THROUGH MR. VIKAS GOEL, DIRECTOR

.....RESPONDENTS

Through: Mr. Sumit Agarwal, Adv for R-1 and 2.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the 1996 Act) by the petitioner, seeking appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties.

2. Heard learned counsel appearing for the parties at length. There exists an arbitration clause in the Notice Inviting Tender (NIT), specifically Clause No. 12, which is reproduced below:

> *"12.0 ARBITRATION*
> *12.1 All disputes or differences in respect of any matter relating to or arising out of this Agreement between Employer & tenderer will be settled amicably and if the same is not resolved amicably, will be settled at New Delhi by Arbitration in accordance with Rules of Arbitration of Indian Council of Arbitration, New Delhi and the Award made in pursuance thereof shall be final and binding on the parties. The venue of arbitration will be New Delhi.*
> *12.2 The contractor shall not, except with the consent in writing of the Employer, or the Consultant, in any way delay the carrying out of the work by reason of any such matter, question or dispute being referred to arbitration but shall proceed with the work with all due diligence and shall, until the decision of the arbitration is given, abide by the decision of the Consultant and no award of the arbitrator shall relieve the contractor of his obligation to adhere strictly to the Consultants' instructions with regard to the actual carrying out of the work except as specifically affected by such award."*

3. During the course of the hearing, various submissions were made by Mr. Udit Seth, learned counsel for the petitioner, and Mr. Sumit Agarwal, learned counsel for the respondents.

4. Mr. Agarwal essentially contended that the petitioner is not entitled to invoke the arbitration clause unless all necessary preconditions are fully complied with. He has also raised an objection to the maintainability of the

present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the A&C Act).

5. Additionally, Mr. Agarwal also argued that both the respondents are not signatories to the NIT and therefore cannot be bound by the arbitration clause.

6. In response, Mr. Seth submitted that all necessary preconditions have been fulfilled and, since no arbitrator was appointed despite such compliance, the petitioner had no option but to approach this Court. Mr. Seth, took the Court through the work order that had been signed by both respondents, thereby demonstrating their participation in the contractual arrangement.

7. It is evident that several issues have arisen in this matter, including the execution and signing of the NIT and the work order.

8. At this stage, the Court is of the opinion that all objections raised by Mr. Agarwal, are capable of being adjudicated by the Arbitrator. Accordingly, the appointment of an Arbitrator is warranted.

9. Without prejudice to the objections raised, respondent No. 2 is, for the time being stands deleted from the array of parties. However, liberty is granted to the petitioner to move an application before the Arbitrator seeking the impleadment of respondent No. 2.

10. 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], as well, has extensively dealt with the scope of interference at the stage of Section 11. Furthermore, this Court, recently, i***n Axis Finance Limited Vs.***

Mr. Agam Ishwar Trimbak[2] has held that the scope of inquiry under Section 11 of the Act has been limited to a *prima facie* examination of the *existence* of an arbitration agreement. Further, it was also reiterated that the 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:*
>
> > *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*

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

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 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. 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*

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

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."

11. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, this Court appoints Mr. Justice

Shantanu S. Kemkar, Former Judge, High Court of Madhya Pradesh and Bombay High Court (Mobile No: +91 7678080789, e-mail id: justicekemkar@gmail.com) as the sole Arbitrator.

12. 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.

13. 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.

14. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.

15. 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.

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 Arbitrator through the electronic mode as well.

17. Accordingly, the instant petition stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 10, 2025
aks/sph