



2025:DHC:10035



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

+ **ARB.P. 1555/2025**

Date of Decision: **10.11.2025**

IN THE MATTER OF:

**1. M/S MONEYWISE FINANCIAL SERVICES PVT LTD
THROUGH ITS AUTHORIZED REPRESENTATIVE
SH. PUNEET KUMAR GOYAL SIO LATE SH. A.K. GOYAL
AT:-**

**11/6-B, 2ND FLOOR, SHANTI CHAMBER,
PUSA ROAD, NEW DELHI-110005**

..... PETITIONER

Through: Ms.Mehvish Khan and Mr.Aman
Choudhary, Advocates.

Versus

**1. MR. AJIT SINGH SETHI S/O MR SAT PAL SINGH SETHI
PROPRIETOR OF SIMAR FORGE**

AT:-

**SHOP NO. 13, DALJIT MARKET,
KOT MANGAL SINGH CHOWK,
LUDHIANA PUNJAB- 141003**

ALSO AT:-

**KOTHI NO- 240, PHASE- 1, SAS NAGAR,
MOHALI RUPNAGAR,
PUNJAB- 160055**

**2. MS. JASJEET KAUR SETHI W/O MR. AJIT SINGH SETHI
AT:-**

**KOTHI NO- 240, PHASE- 1, SAS NAGAR,
MOHALI, RUPNAGAR,
PUNJAB- 160055**

.... RESPONDENTS

Through: None.

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the Act), seeking appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties under Master Loan Agreement dated 28.10.2025 (*the Agreement*).
2. Learned counsel for the petitioner submits that respondent no.1 has been served through email, whatsapp as well as by registered post, whereas, respondent no.2 has only been served by email and whatsapp. She also submits that respondent no.2 is the wife of respondent no.1.
3. Learned counsel for the petitioner has placed on record the service affidavit which reads as under:-

"AFFIDAVIT

I, Aman Choudhary S/o Sh. Arvind Choudhary Aged about 24, Counsel for the Petitioner Company, Having Chamber No 175, Lawyers Chamber- 11, High Court of Delhi-I I 0003, do hereby solemnly affirm as under :-

1. *That I am the Counsel for the Petitioner Company in the present petition and as such I am fully competent to swear this affidavit.*
2. *That I have attempted to serve the notice issued by the Hon'ble High Court along with copy of the petition with all annexures to all the Respondents on behalf of the Petitioner Company to all the email ids of the Respondents mentioned in the Loan Agreement/ Documents on 28.10.2025, through e-mail khanmehvish2189@gmail.com. The copy of the e-mail dated 24.10.2025 is annexed herewith as ANNEXURE -A and the details and status of the same are tabulated as under:*

<u>Respondent</u>	<u>E-mail Address</u>	<u>Date of service</u>	<u>Status</u>
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<u>No.</u>			
1 & 2	simarforge@yahoo.com	28.10.2025	Bounced Back
1 & 2	simar_forge@yahoo.com (Mentioned on the MSME Udyam Registration Certificate)	28.10.2025	Served

3. That I have attempted to serve the notice issued by the Hon'ble High Court along with copy of the petition with all annexures to all the Respondents on behalf of the Petitioner Company via WhatsApp on the mobile no mentioned in the Loan Agreement/ Documents on 06.11.2025 through WhatsApp number 9205420459. The screenshot of the WhatsApp messages is annexed herewith as ANNEXURE -B and the details and status of the same are tabulated as under:

<u>Respondent No.</u>	<u>WhatsApp number</u>	<u>Date of service</u>	<u>Status</u>
1 & 2	9216104029	30.10.2025	Delivered
1	9814087219	30.10.2025	Delivered

4. That I have sent the notice issued by the Hon'ble High Court along with copy of the petition with all annexures to the Respondent No I on behalf of the Petitioner Company on their last known & Correct address via Speed post and Courier to the following addresses:

<u>S. No.</u>	<u>Address</u>	<u>Speed Post "Status"</u>	<u>Courier "Status"</u>
1	SHOP NO. 13, DALJIT MARKET, KOT MANGAL SINGH CHOWK, LUDHIANA PUNJAB-141003	Returned "No such person in the address"	Returned "Party Shifted"
2	KOTHI NO- 240, PHASE- 1, SAS NAGAR, MOHALI RUPNAGAR, PUNJAB-160055	Delivered	In Transit



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5. That I have sent the notice issued by the Hon 'ble High Court along with copy of the petition with all annexures to the Respondent No 2 on behalf of the Petitioner Company on their last known & Correct address via Speed post and Courier to the following addresses:

<u>S. No.</u>	<u>Address</u>	<u>Speed Post</u> <u>"Status"</u>	<u>Courier "Status"</u>
1	KOTHI NO- 240, PHASE- 1, SAS NAGAR, MOHALI RUPNAGAR, PUNJAB- 160055	In Transit	In Transit

4. Despite service, no one appeared on behalf of the respondent nos.1 and 2.

5. The petitioner is a non-banking financial company which provides loan facilities to individual and corporate clients. Respondents no. 1 and 2 are alleged to have approached the petititoiner company to avail loan facility to the tune of Rs.10,11,941/- (Rupees Ten lakh Eleven Thousand Nine Hundred and Forty One Only) in the October 2022 and the said loan amount was disbursed to respondent no.1 in terms of the Agreement. Respondent no.2 stood as co-borrower in her individual capacity, and the said loan was to be repaid in equal monthly instalments.

6. According to the petitioner, the respondents have defaulted in repayment of the loan after paying only eight instalments as per the terms of the Agreement. As per the case set up by the petitioner, as on 21.06.2025 there was an outstanding amount of Rs.12,99,352/-. It is the case of the petitioner that the respondents failed to adhere to financial discipline and



committed default in the repayment of the said loan.

7. The petitioner has also issued recall cum arbitration invocation notice dated 30.07.2025, under Section 21 of the Act. Despite service of the said notice and repeated follow up, the respondents did not respond. Hence, the petitioner has filed the present petition.

8. The Court takes note of Clause 8.2 of the Agreement, which is extracted as under:-

“8.2 Arbitration

"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 (or the Arbitrator's decision. The costs and expenses of the Arbitration shall be borne equally by each Party. with each costs and expenses of the Arbitration shall be borne equally by each parry. with each parry paying (or 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".

9. 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

¹ 2025 SCC OnLine Del 3022



reference. Furthermore, in *Axis Finance Limited Vs. 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 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

² 2025:DHC:7477



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 7. Similarly, 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.

(c) Referral Courts only need to consider one aspect to

³ 2024 SCC OnLine SC 1754

⁴ 2025 SCC OnLine SC 1471



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.”



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9. In view of the aforesaid, there is no impediment in appointing the Arbitrator. Accordingly, Ms. Sandhya Gupta, Advocate (Mobile No.9312280288, e-mail id: sgsandhyagupta@yahoo.co.in) is appointed as the sole Arbitrator to adjudicate the disputes between the parties.

10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and in terms of its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

11. 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.

12. 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.

13. 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 a copy of the instant order be sent to the Sole Arbitrator through electronic mode as well.

14. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 10, 2025

Nc/amg