$~O-2

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

\+ ARB.P. 347/2025

Date of Decision: **14.11.2025**

IN THE MATTER OF:

POOJA MOURYA .....Petitioner

Through: Mr. Mukesh Kumar Dral, Mr. Rohan Aggarwal and Mr. Sonu, Advs.

versus

ADWAIT GUPTA .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

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.

2. Learned counsel for the petitioner has placed on record the service affidavit, and, the same is extracted as under:

> "*I, AMAN SAROHA, Enroll. No. D/2521/2011, aged about 36 years, S/o Sh. Anoop Singh Saroha, having his office at: Chamber No.407, Lawyers' Chamber Block, Rohini Court, Delhi-85, do hereby solemnly affirm and declare as under:*
> *1. That I am the counsel of petitioner in the present matter and well conversant with the facts and circumstances of the case and also regarding service to the respondent qua the present matter. I am competent to swear this affidavit.*
> *2. That the summons along with a copy of the petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, has been duly served*

Signature Not Verified
Signed By:AMIT KUMAR SHARMA
Signing Date:22.11.2025 15:58:58

Signature Not Verified
Signed By:PURUSHAINDRA KUMAR KAURAV

upon the Respondent through multiple modes of service i.e. via Whatsapp from the counsel's number 9555553015 to the mobile number of the respondent 9910931000 on 04.07.2025 (Screenshot attached), via email from the counsel's email id - sarohaandsarohalawchambers@gmail.com to the email id of the Respondent shyamkripa83@gmail.com, authorized Courier sent on 03.07.2025 which was delivered on 05.07.2025 and speed post sent on 03.07.2025 which was received on 04.07.2025 by the respondent at his current residential address, i.e., House No. D-18, First Floor, Sai Apartment, Sector-13, Rohini, Delhi – 110085.

3. That the respondent has been duly served with the summons through the modes as specified hereinabove."

3. It is, thus, seen that the service of notice has been duly effected upon the respondent. Therefore, the Court proceeds to adjudicate the instant petition.

4. The facts of the case would reveal that the dispute has arisen out of the Rent Agreement dated 24.04.2024 entered into between the parties. It is the case of the petitioner that the respondent has failed to pay the rent and is allegedly in continued illegal occupation. It is submitted that on 12.06.2024, the petitioner, after waiting for a considerable period, exercised her right as expressed in Clause 20 of the Rent Agreement and gave one-month advance notice through e-mail to the respondent for vacating the property and clearance of the arrears of rent, etc. However, there was no response from the respondent. Thereafter, a legal notice under Section 21 of the Act dated 11.09.2024 invoking the arbitration clause was also sent to the respondent.

5. The Clause 25 i.e. the arbitration clause in the rent agreement dated 24.04.2024 is reproduced as under:

"25. That if any dispute may arise between the parties regarding interpretation and/or implementation of any terms and conditions of this Rent Agreement, the same shall be referred to the arbitrator under Arbitration & Conciliation Act, 1996, whose decision shall be final and binding on both the parties and/or the same may be defended subject to Delhi Court Jurisdictions only."

Signature Not Verified
Signed By:AMIT KUMAR SHARMA
Signing Date:22.11.2025 15:58:58

Signature Not Verified
Signed By:PURUSHAINDRA KUMAR KAURAV

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 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)*

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

Signature Not Verified
Signed By:AMIT KUMAR SHARMA
Signing Date:22.11.2025 15:58:58

Signature Not Verified
Signed By:PURUSHAINDRA KUMAR KAURAV

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 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

Signature Not Verified
Signed By:AMIT KUMAR SHARMA
Signing Date:22.11.2025 15:58:58

Signature Not Verified
Signed By:PURUSHAINDRA KUMAR KAURAV

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

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

Signature Not Verified
Signed By:AMIT KUMAR SHARMA
Signing Date:22.11.2025 15:58:58

Signature Not Verified
Signed By:PURUSHAINDRA KUMAR KAURAV

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 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

Signature Not Verified
Signed By:AMIT KUMAR SHARMA
Signing Date:22.11.2025 15:58:58

Signature Not Verified
Signed By:PURUSHAINDRA KUMAR KAURAV

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 dispute has arisen between the parties and there is an arbitration clause in the contract, there is no impediment in appointing the sole Arbitrator.

8. Accordingly, Mr. Ishaan Seth, Advocate (Mobile No.-8527509899, email id- ishaan.seth2000@gmail.com) is appointed as the sole Arbitrator.

9. 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.

10. 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.

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 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.

13. Accordingly, the instant petition stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 14, 2025
aks/mj

Signature Not Verified
Signed By:AMIT KUMAR SHARMA
Signing Date:22.11.2025 15:58:58

Signature Not Verified
Signed By:PURUSHAINDRA KUMAR KAURAV