



2025:DHC:3993



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

+ **ARB.P. 104/2025**

Date of Decision: **15.05.2025**

IN THE MATTER OF:

1. MR. DEEPAK KUMAR

S/O MR. MOHAR SINGH YADAV

R/O 482/21, STREET NO. 10,

OM NAGAR, GURUGRAM HARYANA-122001

2. MRS. REKHA RANI YADAV

W/O MR. DEEPAK KUMAR

R/O 482/2, STREET NO.10, OM NAGAR,

GURUGRAM HARYANA-122001

..... PETITIONERS

Through: Mr.Akshya, Advocate.

Versus

1. MOHIT JAIN

S/O MR. VINAY JAIN

R/O L4/27, DLF PHASE-II, JAIN MANDIR WALI GALI,

GURUGRAM, HARYANA-122002

.... RESPONDENT

Through: Ms.Niharika Rai, Advocate for R-1.
Mr.Sandeep Phogat and Mr.Ravi,
Advocates for R-2.

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 1996 Act), seeking appointment of an Arbitrator to adjudicate upon the disputes that have arisen between the parties.

2. The facts of the case would indicate that on 18.06.2022, the petitioners were allotted the Commercial Unit bearing no. GB-53 in “68 Avenue” in Sector-68, Gurugram which was being developed by VSR Infratech Pvt Ltd.. Thereafter, the petitioners entered into a Memorandum of Understanding (MoU) cum Agreement dated 22.04.2023 with the respondent for investing in the property bearing No.F-02, BPTP, Astaire Gardens, Sector 70 & 70A, which was allotted to the respondent through Allotment Letter issued by Builder BPTP dated 31.03.2023. As per the case of the petitioners, they agreed to make an investment of 30% i.e. Rs.1,08,00,000/- of the total considered Sale amount of property i.e. Rs. 3,60,00,000/- in the Property allotted to Respondent and the Respondent agreed to invest for the remaining 70%.

3. After the execution of the said MoU, a dispute has arisen and the petitioner has sent a legal notice on 18.11.2024 to the respondent invoking the Arbitration Clause in the MoU. Thereafter, the petitioner has filed the instant petition as well as a petition under Section 9 of the 1996 Act.

4. On notice being issued, respondents have filed their reply and opposed the prayer made in the instant petition on various grounds.

5. Heard learned counsel appearing on behalf of the parties.

6. A perusal of the reply would however indicate that the respondents do



not deny the execution of the MoU cum Agreement dated 22.04.2023 and existence of Clause 22 therein.

7. The Court takes note of Clause 22 of Memorandum of Understanding (MoU) cum Agreement dated 22.04.2023, which reads as under:-

“22. DISPUTE RESOLUTION: In case for any reason any differences and/or disputes relating to the performance of this MoU cannot be resolved amicably by the parties, the same shall be settled finally by way of arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 (as amended up to date) and the Sole Arbitrator to be appointed by the by the parties mutually. The arbitration proceedings shall be carried out in Delhi, India. The arbitral award shall be binding on the parties and shall be fully honored and complied with and is enforceable in the courts of India & each Party shall bear its own costs.”

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

¹ 2023 SCC OnLine SC 1666.



SBI General Insurance Co. Ltd that observations made in **Vidya Drolia v. Durga Trading Corpn.**, and adopted in **NTPC Ltd. v. SPML Infra Ltd.**,² 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.**, 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 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

² (2023) 9 SCC 385.



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**".*

9. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the MoU, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.
10. Accordingly, Mr. Shyam Sharma, Senior Advocate (Mobile No +91-9810156965, Email ID- law.shyam2@gmail.com, globallawyers287@gmail.com) is appointed as the sole Arbitrator.
11. 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.
12. 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.
13. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.
14. 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.
15. Needless to say, nothing in this order shall be construed as an



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expression of opinion of this Court on the merits of the controversy between the parties. Let a copy of the said order be sent to the appointed Arbitrator through the electronic mode as well.

16. Accordingly, the instant petition stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

MAY 15, 2025

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Click here to check corrigendum, if any