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

\+ **ARB.P. 1318/2025**

Date of Decision**: 17.10.2025**

IN THE MATTER OF:

CHAND VIJ
S/O SH. BALWANT RAI VIJ
SOLE PROPRIETOR OF
M/S VISHAL TENT DECORATORS
OFFICE AT G-15, MAHARANA PRATAP
MARKET, OPP. RAMJAS ROAD, KAROL
BAGH, NEW DELHI – 110005

..... PETITIONER

Through: Mr.Akshat Bajpai, Mr.Shobhit Trehan, Ms.Renuka Parmanand, Ms.Jayashree Mishra, Advocates.

Versus

1. GOVT OF NCT DELHI
THROUGH ITS CHIEF SECRETARY, A-WING, 5TH FLOOR, DELHI SECRETARIAT, I.P. ESTATE ,
NEW DELHI-110002

2. FOREST AND WILDLIFE DEPARTMENT
THROUGH ITS PRINCIPAL CHIEF CONSERVATOR OF FOREST, 2ND FLOOR, A-BLOCK, VIKAS BHAWAN, CENTRAL, I.P. ESTATE, NEW DELHI, DELHI-110002

.... RESPONDENTS

Through: Mr.Shiven Varma, Advocate for R-1

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and 2.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 *(the Act)* by the petitioner, 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 the petitioner is engaged in the business of providing tentage and decoration services under the name and style of M/s Vishal Tent & Decorators. The petitioner was awarded contract bearing no. GEMC-511687702008443 dated 13.07.2023 through the Government e-Marketplace (GeM) Portal by the respondents. As per the case set up by the petitioner, work of Rs.2,94,45,368.00/- was executed, however, only a sum of Rs. 1,30,66,722.20/- was paid. It is also stated that the respondents have failed to remit the outstanding amount of Rs.1,63,78,646/- in respect to the add-on work. The petitioner claims to have made various representations seeking clearance of the balance amount, but the respondents did not respond to the same.

3. It is further stated that pursuant to the arbitration clause (Clause 16) in the General Terms and Conditions on GeM 4.0 (Version 1.10) dated 02.05.2023 *(the Agreement)*, the petitioner issued a notice dated 02.06.2025 invoking conciliation under Clause 16.1 (i) and (ii), followed by a notice

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dated 07.07.2025 invoking arbitration under Clause 16.2. However, despite service of both notices, the respondents have failed to respond or take any steps towards the appointment of an Arbitrator. Under the aforesaid circumstances, the instant petition came to be filed.

4. Clause 16.2 of the Agreement which provides for arbitration of disputes, reads as under:-

> ***"16.2. ARBITRATION***
>
> *"In the event of any conflict/ dispute arising out of or in connection with the Contract placed through GeM, which has not been resolved in accordance with the procedure laid down in Clause 16.1 above, the aggrieved Party may invoke Arbitration by sending a written notice to the other Party. The procedure for appointment of the Arbitral Tribunal Shall be as follows.*
>
> *(i) In cases where the total value of the Contract is less than INR 1.00,00,000/- (Indian Rupees One Crore only) the same shall be referred to a sole arbitrator mutually appointed by both the Parties.*
>
> *(ii) Where the total value of the Contract exceeds INR 1,00,00,000/- (Indian Rupees One Crore only), the arbitration shall be conducted by a quorum of three arbitrators. Each party shall be entitled to appoint an arbitrator and the two party-appointed arbitrators shall within 30 (thirty) days from their nomination, appoint a third arbitrator i.e., the Presiding Arbitrator.*
>
> *(iii) In case of failure to appoint the Presiding Arbitrator within a period of 30 (thirty) days from the date of nomination of the two arbitrators by the respective parties, the aggrieved party shall approach the High Court (under whose jurisdiction the principal place of business of the Buyer department/organization is located) to appoint the Presiding Arbitrator as per the provisions of the Arbitration and Conciliation Act. 1996 (as amended up to date).*
>
> *(iv) The arbitration shall be conducted in the English language. Arbitration proceedings can also be conducted online as per the discretion of the Arbitral Tribunal.*

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(v) The cost of the Arbitration shall be equally borne by both the Parties.

(vi) The award of the arbitrator shall be final and binding on the Parties to the Contract. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996, as amended up to date. The seat of arbitration shall be at the place where the principal place of business of the Buyer department organization is located.

(vii) The Contract shall be interpreted and governed in all respects in accordance with the laws of India. All disputes in connection with or arising out of the Contract, shall be subject to the exclusive jurisdictionof the Court within the local limits of whose jurisdiction principal place of business of the Buyer department/ organization is located."

5. Learned counsel who appears on behalf of the respondents have raised various objections including to contend that the claims which have been made in the instant case is beyond the terms of the contract. He, therefore, submits that the petitioner is not entitled for any amount as claimed herein.

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 11of the Act. Furthermore, in ***Axis Finance Limited Vs. Mr. Agam Ishwar Trimbak***[2] it has been 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 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:-

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

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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 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*

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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

[3] 2024 SCC OnLine SC 1754

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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 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.

[4] 2025 SCC OnLine SC 1471

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> *(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."*

9. Under the aforesaid circumstances, it is seen that there is a valid arbitration clause and the dispute is amaneble to be adjudicated by the Arbitrator. Accordingy, Mr. Amandeep Joshi (Mobile No. 9818065100, e-mail id: amandeepjoshi.adv@gmail.com) is appointed as the sole Arbitrator.

10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and

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

13. 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. The respondents shall also be entitled to put forth their case that there exist no obligation of the respondents to make the payment against the supply, which has been made beyond the terms of the contract. All those aspects can be looked into by the Arbitrator including the binding effect of the contract etc.

14. 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 Arbitrator through the electronic mode as well.

15. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 17, 2025
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