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

\+ ARB.P. 1459/2025

Date of Decision**: 17.10.2025**

IN THE MATTER OF:

TATA CAPITAL LIMITED .....Petitioner

Through: Ms. Madhumita Bagchi and Mr. Hardik Maurya, Advs.

versus

M/S GODWIN STEEL INDUSTRIES & ANR. .....Respondents

Through: None.

CORAM:
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.

2. The petitioner has placed on record the affidavit of service, the same is extracted as under:

> *"1. That I have been appointed as the advocate for the Petitioner in the present matter. I am fully conversant with the facts and circumstances of the present case on the basis of the records maintained by the Petitioner and am as such competent to swear to the present affidavit.*
> *2. That the present affidavit is being filed in pursuance of the Order dated 12.09.2025 by which this Hon'ble Court was pleased to issue notice to the Respondent in the present matter through all permissible modes.*

3. That in compliance of the said Order dated 12.09.2025, the Respondents were served with the summons issued by this Hon'ble Court and the petition under Section 11 of the Arbitration and Conciliation Act, 1996 filed in the present matter through Email, WhatsApp and Speed Post.

4. That the following email addresses of the Respondents are available as per the records of the Petitioner:
(i) ***nirmal_rnu@rediffmail.com***

5. It is stated that service of the summons issued by this Hon'ble Court and the petition under Section 11 of the Arbitration and Conciliation Act, 1996 filed in the present matter, on the above-mentioned email addresses of the Respondent was effectuated through the email id of my associate Ms. Madhumita Bagchi i.e., ***madhumita@sahaico.in****. It is submitted that the said email dated 03.10.2025 was delivered to the email id of the Respondents and has not bounced back. True copy of the email dated 03.10.2025 has been annexed herewith as Document–1.*

6. That the following phone number with an active WhatsApp account of the Respondents is available as per the records of the Petitioner –
(i) Account No. 1: +91–9915326081;
(ii) Account No. 2: +91–8872026002.

7. It is stated that service was also effectuated through WhatsApp on the Respondents' account linked to the above-mentioned mobile numbers, by my office, on 03.10.2025. A copy of the summons issued by this Hon'ble Court, along with the petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, has been duly delivered to the said WhatsApp accounts of the Respondents. The delivery is evidenced by the presence of double grey ticks, indicating that the documents have been received by the Respondents. True copy of the service through WhatsApp dated 03.10.2025 on the aforesaid WhatsApp account no. 1 of the Respondent has been annexed herewith as Document – 2. True copy of the service through WhatsApp dated 03.10.2025 on the aforesaid WhatsApp account no. 2 of the Respondent has been annexed herewith as Document – 3.

8. That the Respondents were also served the summons issued by this Hon'ble Court and the petition under Section 11 of the Arbitration and Conciliation Act, 1996 filed in the present matter through speed post, dated 29.09.2025 on the following addresses of the Respondents which are available as per the records of the Petitioner:

(i) RESPONDENT NO. 1

ADDRESS NO. 1
496, STREET NO. 1, NIRANKARI MOHALLA,
OVERLOCK ROAD, MILLER GANJ,
LUDHIANA, PUNJAB-141003

ADDRESS NO. 2
15, JASPAL BANGER ROAD, MANN KANDA STREET, INDUSTRIAL AREA–C, LUDHIANA, PUNJAB–141122

ADDRESS NO. 3
#63, BASANT VATIKA, PHULLANWAL, NEAR FLOWHR HNCLAVE BASANT AVENUE, LUDHIANA, PUNJAB–141003

(ii) RESPONDENT NO. 2

ADDRESS NO. 1
63, BASANTVATIKA, PHULLANWAL, NEAR FLOWER ENCLAVE BASANT AVENUE, LUDHIANA, PUNJAB–141003

True copy of the speed post receipt dated 29.09.2025 have been annexed herewith as Document–4(Colly.).

9. It is submitted that the tracking report of the speed post consignment bearing No. SU002182310IN, booked on 29.09.2025 and sent to the Address No. 1 of the Respondent No. 1, evidences that the summons issued by this Hon'ble Court, along with the petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, has been duly delivered which is evident from the last event of the report dated 03.10.2025 showing current status as 'Item Delivered' at Millerganj SO. A true copy of the tracking report of the speed post sent to Address no. 1 of Respondent No. 1 is annexed herewith and marked as Document–5.

10. It is submitted that the tracking report of the speed post consignment bearing No. SU0021823231N, dated 24.07.2025, sent to Address No. 2 of Respondent No. 1, indicates that the summons issued by this Hon'ble Court, along with the petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, remain undelivered. The said tracking report shows the current status of the consignment as "in transit." Therefore, the service of the said documents at Address No. 2 of Respondent No. 1 remains incomplete. A true copy of the tracking report of the speed post sent to Address No. 2 of Respondent No. 1 is annexed herewith and marked as Document – 6.

11. It is submitted that the tracking report of the speed post consignment bearing No. SU0021823371N, booked on 29.09.2025 and sent to the

Address No. 3 of the Respondent No. 1, evidences that the summons issued by this Hon'ble Court, along with the petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, has been duly delivered which is evident from the last event of the report dated 03.10.2025 showing current status as 'Item Delivered' at Ludhiana SO. A true copy of the tracking report of the speed post sent to Address no. 3 of Respondent No. 1 is annexed herewith and marked as Document – 7.

12. It is submitted that the tracking report of the speed post consignment bearing No. SU0021823541N, booked on 29.09.2025 and sent to the Address No. 1 of the Respondent No. 2, evidences that the summons issued by this Hon'ble Court, along with the petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, has been duly delivered which is evident from the last event of the report dated 03.10.2025 showing current status as 'Item Delivered' at Ludhiana SO. A true copy of the tracking report of the speed post sent to Address No. 1 of Respondent No. 2 is annexed herewith and marked as Document – 8.

13. That the annexures are true copies of the respective originals.

14. That the contents of the above affidavit are true and correct and no part of it is false and nothing material has been concealed therefrom."

3. It is, thus, seen that despite service of notice, no one appears on behalf of the respondents.

4. The facts of the case would indicate that the petitioner is a non-banking financial company duly registered with the Reserve Bank of India, having its registered office at Mumbai and a branch office at New Delhi. The respondent no. 1, a sole proprietorship concern, through its sole proprietor Mr. Nirmal Singh, along with respondent no. 2 as guarantor, approached the petitioner seeking financial assistance in the form of a Channel Finance Facility. Pursuant to the loan application dated 28.03.2024, the petitioner sanctioned a loan facility of INR 70,00,000/- (Rupees Seventy Lakhs only) vide sanction letter dated 31.03.2024, duly accepted and executed by the respondents. In furtherance thereof, the parties executed a Loan-cum-Guarantee Agreement dated 15.04.2024, read with the Master

Terms and Conditions dated 31.12.2018, wherein respondent no. 2 guaranteed, jointly and severally, to repay all amounts due and payable by respondent no. 1, including interest, charges, and other dues, in case of any default.

5. It is the case of the petitioner that petitioner duly disbursed the sanctioned amount under the facility, which was availed and utilized by respondent no. 1 for its business purposes. However, respondent no. 1 committed defaults in repayment commencing from 16.06.2025 and failed to regularize the account despite repeated reminders. Consequently, the petitioner issued a Loan Recall Notice dated 09.07.2025, recalling the entire facility and invoking arbitration under Clause 12 of the Loan-cum-Guarantee Agreement. As per the Statement of Account, a sum of INR 31,16,907/- (Rupees Thirty-One Lakhs Sixteen Thousand Nine Hundred and Seven only) remained outstanding as on 15.05.2025, besides further interest and other charges. It is further contended that in view of the continued default, and the respondents' failure to mutually agree on the appointment of a sole arbitrator, the petitioner is constrained to approach this Court seeking appointment of an independent and impartial arbitrator in terms of the arbitration clause contained in the agreement.

6. The arbitration clause i.e. the Clause 12 of the agreement dated 15.12.2024 reads as under:

> "*Clause 12 of the Channel Finance Agreement:*
>
> *"If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under these T&Cs or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole*

arbitrator to be appointed as per the procedure below and to be held at such place as agreed by the parties in Serial No. 17 of Annexure I hereto of the Agreement. The Party invoking the arbitration ("Claimant") shall address a notice to the other party ("Respondent") suggesting the names of not more than three arbitrators, all of whom shall be either retired judges of the District Court, High Court or the Supreme Court or a lawyer having minimum 10 years' relevant experience. The Respondent shall either:

(i) Confirm in writing acceptance of one amongst the proposed names as the sole arbitrator to the Claimant within a period of ten (10) days from the date of the notice ("Notice Period"); or

(ii) Convey objection, if any, in writing to the Claimant against the proposed names of the sole arbitrator within the said Notice Period.

However, if the Claimant does not receive any response from the Respondent within the said Notice Period, the Claimant shall be entitled to nominate any one person from amongst the proposed three names as the sole arbitrator and such arbitrator shall be deemed to be appointed by both the Parties.

In the event, the Respondent conveys his objection as per (ii) above then the sole arbitrator will be appointed by a Court having jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliations Act, 1996, together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The arbitration proceedings shall be conducted in English language. The award of the arbitrator shall be final and binding on all parties concerned. The cost of arbitration shall be borne by the Obligors."

7. 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. Furthermore, this Court, in ***Axis Finance Limited Vs. Mr. Agam Ishwar Trimbak***[2] 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

[1] 2025 SCC OnLine Del 3022

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 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*

[2] 2025:DHC:7477

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

[3] 2024 SCC OnLine SC 1754

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.

(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

[4] 2025 SCC OnLine SC 1471

> *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."*

8. 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. Adhishwar Suri, Advocate (Mobile No: +91 9910996649, e-mail id: asurilegal@gmail.com) as the sole Arbitrator.

9. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12 of the Act.

10. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the Act or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

11. The parties shall share the arbitrator's fee and arbitral cost, equally.

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 state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy. All rights and contentions of the parties in this regard are reserved. Let the copy of the said order be sent to the Sole Arbitrator through the electronic mode as well.

14. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 17, 2025
aks/sph