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

\+ **ARB.P. 518/2025 and I.A. 7507/2025**

Date of Decision**: 17.10.2025**

IN THE MATTER OF:

TATA CAPITAL HOUSING FINANCE LTD
11th FLOOR, TOWER A, PENISULA BUSINESS PARK,
GANPATRAO KADARN MARG, LOWER PAREL,
MUMBAI – 400013

ALSO AT,
B36, 1st & 2nd FLOOR, LAJPATNAGAR,
NEW DELHI-110024
THROUGH ITS AUTHORIZED REPRESENTATIVE
MR.ASHISH KURNAR

..... PETITIONER

Through: Ms. Shobha Gupta, Ms. Akshita Mishra, Ms. Simranjeet Kaur and Ms. Manasvi Negi, Advocates.

Versus

1. **HEMANT RUDRA**
B-506, PARS VNATH PRESITGE, PLOT NO.002,
SECTOR-93-A,NOIDA EXPRESSWAY, U.P-20 1304

2. **JYOTI RUDRA**
B-506,PARSVNATH PRESITGE ,PLOT NO.002,
SECTOR-93-A, NOIDA,U.P-201304

3. **PARSVNATH DEVELOPERS LTD**.
THROUGH ITS DIRECTORS
REGISTERED OFFICE AT- PARSVNATH METRO TOWER, NEAR

SHAHDRA METRO STATION, SHAHDARA. DELHI EAST-110032

ALSO AT:
CORPORATE OFFICE AT : 6TH FLOOR, ARUNACHAL BUILDING, 19,
BARAKHARNBA ROAD, NEW DELHI- 110001

.... RESPONDENTS

Through: None for R-1 and 2
Counsel for R-3 (appearance not given)

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 under the Loan Agreement dated 29.09.2012 *(the Loan Agreement)*.

2. Learned counsel for the petitioner has placed on record the service affidavit which reads as under:-

*"**AFFIDAVIT OF SERVICE***

I, Advocate Shobha Gupta, counsel for plaintiff having Office at C-35 South Extension Part-2 do hereby affirms and declares as under:

1. That I am the Counsel for Petitioner in the captioned matter and, as such, am fully conversant with the facts and circumstances of the case and I am competent to swear this affidavit.

2. That the respondents has been served on their Email ID:

hemant_rudra@yahoo.com, SECRETARIAL@parsvnath.com, mail@parsvnath.com and vide dated 20.03.2025 at 12.55 from Srshobhagupta@gmail.com.

3. I affirm and declare that these are the true and correct emails of the respondents available to me as per the plaintiff's record.

4. That the contents of this affidavit are true and correct to the best of my knowledge."

3. Despite service, no one appeared on behalf of the respondent nos.1 and 2. Learned counsel who appeared on behalf of respondent no.3 submits that respondent no.3 has no objection to the appointment of the Arbitrator. Therefore, the Court proceeds to hear the matter.

4. The petitioner is a housing finance company engaged in the business of extending housing loans, whereas, respondents no. 1 and 2 are borrowers who have availed a loan from the petitioner to finance the purchase of a unit in the property being developed by respondent no. 3. The petitioner claims to have extended a loan of Rs. 40,83,405/- (Rupees Forty Lakh Eighty-Three Thousand Four Hundred and Five only) *vide* Sanction Letter dated 13.09.2012 in favour of respondents no. 1 and 2, while the latter created an equitable mortgage over the aforesaid property in favour of the petitioner as security.

5. 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.

6. The petitioner has also issued a notice under Section 21 of the Act *vide* recall cum arbitration invocation notice dated 13.11.2021. Despite service of the said notice and repeated follow up, respondents did not

respond. Pursuant to the same, an Arbitrator was appointed by the petitioner but the said appointment was objected to by the respondents on the ground that the same was done unilaterally by the petitioner. Hence, the petitioner has filed the present petition.

7. Clause 12.11 of the Loan Agreement reads as under:-

> ***"12.11 Arbitration***
>
> *a) If any dispute, difference or claim arises between the parties hereto in connection with this Agreement or the Security hereof or the validity, interpretation, implementation or alleged breach of this Agreement or anything done or omitted to be done pursuant to this Agreement or otherwise in relation to the Security hereof, the parties shall attempt in the first instance to resolve the same through negotiation/conciliation. It the dispute is not resolved through negotiation conciration within thirty days after commencement of discussions or such longer period as the parties agree to in writing, then the same shall be settled by arbitration to be held at such place as mentioned under item no. XV of Schedule A in accordance With the Arbitration and Conciliation Act 1996, or any statutory amendments thereof andshall be referred toe Sole Arbitrator to be appointed by TCHFL. In the event of death, refusal, negiect, inability, or incapability of the person so appointed to act as a Sole Arbitrator, TCHFL may appoint a new arbitrator. The award of the arbitrator shall be final and binding on all parties concerned.*
> *b) The Borrower's liability hereunder shall not be affected, terminated or prejudiced by the death, insolvency or any incapacity of the Borrower, but such liability shall continue in full force and effect end shall be binding on the Borrower's successors."*

8. 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 of the Act. Furthermore, this Court, in ***Axis Finance Limited v. Mr. Agam***

[1] 2025 SCC OnLine Del 3022

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 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*

[2] 2025:DHC:7477

"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 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 determine the existence of an arbitration agreement — whether*

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

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."

9. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the Loan Agreement, Mr. Naveen Gupta, Advocate, (Mobile No.9312248478, e-mail id: ngnaveengupta@yahoo.co.in) is appointed as the Sole Arbitrator.

10. 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.

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

12. The parties shall share the Arbitrator's fee and arbitral cost, equally.

13. 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.

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

15. Accordingly, the instant petition stands disposed of along with other pending application(s).

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 17, 2025

Nc/amg