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

\+ **ARB.P. 846/2025**

Date of Decision**: 17.10.2025**

IN THE MATTER OF:

M/S ARISTO PAPER MART
A REGISTERED P ARTNERSHJP FIRM
HA YING ITS OFFICE AT:
3649, GALI LOHEWALI
CHAWRI BAZAR, DELHI-110006
DULY REPRESENTED THROUGH ITS PARTNER
SHRI VIP IN JAIN

..... PETITIONER

Through: Mr. Sugam Sharma, Advocate.

Versus

SHRI ANIL CHAUDHARY
PROPRIETOR OF MIS KAPIL AGENCIES
19, MELA RAM MARKET
CHAWRI BAZAR
DELHI-110006 .... RESPONDENT

Through: None.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

The present petition has been filed under Section 11(5) and 11(6) 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 sevice affidavit which reads as under:-

> *"**AFFIDAVIT OF COUNSEL FOR THE PETITIONER***
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> *I, Sugam Sharma. Sio Mr. Narcsh Kumar Sharma. aged about 40 years. Counsel tor the Petitioner haYing its office .at C- I 59. Ground Floor. Defence Colony. New Dclhi- l I 0024 and enwlml..':nt No. D/4134/20 19, do hereby solemnly affirm and declare as under:.*
>
> *1. I am the Counsel for the Petitioner in the present matter and I am fully conversant with the facts and circumstances of the present case and as such I am competent to sign and swear this aflidavit.*
>
> *2. I say that advance service of the Petition being preferred under Sectio 11 of the Arbitration and Conciliation Act, 1996 along with the relevant documents has been served upon the Respondent by way of Email on its Email ID being anilchaudhary30@gmail.com on 28.05.2025. I state that the said email did not bounce back. The Email dated 28.05.2025 is attached along with the present affidavit as proof of Servoc/ Email.*
>
> *3. I state that the contents of the present affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom."*

3. Despite service, no one appeared on behalf of the respondent. Therefore, the Court proceeds to hear the matter.

4. The facts of the case would indicate that the petitioner is a registered partnership firm dealing in various kinds of paper items. It is the case of the petitioner that it sold goods and materials to the respondent in terms of various invoices. It is further stated that the respondent accepted the material and the invoices but has failed to make any payment to the petitioner. The petitioner claims that there is an outstanding amount of Rs. 39,73,674/-

(Rupees Thirty Nine Lakhs Seventy Three Thousand Six Hundred Seventy Four only) which is due and payable by the respondent. Despite various requests and reminders, the respondent has failed to make any payment towards the outstanding amount. Thereafter, the petitioner was constrained to issue a legal notice dated 14.01.2019 calling upon the respondent to pay the outstanding amount along with interest within 15 days from the receipt of the said notice. The respondent did not comply with the terms of the notice and also failed to make any payment towards the outstanding dues.

5. It is further stated that both the petitioner and the respondent are members of the Paper Merchant Association (Regd.) and as such, both the parties to the petition are governed by the rules and regulations of the Paper Merchant Association (Regd.). It is submitted that Clause 4 in the invoices *(the Arbitration Agreement)*, provides for arbitration, and the same is reproduced as under:-

> *"In case of any dispute in respect to this bill, the same shall be referred to "The Paper Merchants Association" for sole arbitration and the judgment given by the arbitration/arbitrators app ointed by the executive committee shall be final and binding."*

6. The petitioner states that the parties had undergone an earlier round of arbitration on the instant dispute, wherein, the respondent herein was placed ex-parte, and an award dated 23.05.2024 was passed.

7. However, when the enforcement petition in pursuance of the said award was filed before the District Judge (Commercial), Central District, Tis Hazari Courts, Delhi, the same was dismissed *vide* order dated 23.10.2024

on the ground that the Arbitrator had been appointed unilaterally by the petitioner. Therefore, the petitioner has filed the present petition.

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, 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: -

> *"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:*
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> > *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*

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

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 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]

[3] 2024 SCC OnLine SC 1754

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.*
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> *(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.*
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> *(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*

[4] 2025 SCC OnLine SC 1471

> *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]*
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> *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 agreement between them, Mr. Kushagra Singh, Advocate (Mobile No.+91-9978955157, e-mail id: kushagra@ecclesialegal.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 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.

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 electronic mode as well.

15. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 17, 2025
Nc/amg