$~O-1 & 2

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

Date of Decision**: 18.09.2025**

IN THE MATTERS OF:

\+ ARB.P. 150/2025

DR MAHESH Y REDDY .....Petitioner

Through: Mr. Ritesh Khatri, Adv.

versus

KEVIN MARCUS WILLIAM GOVINDER SINGH OLAUSSON .....Respondent

Through: Mr. Tamradhwaj Sharma, Adv.

O-2

\+ O.M.P.(I) (COMM.) 57/2025 & I.A 4380/2025

DR MAHESH Y REDDY

.....Petitioner

Through: Mr. Ritesh Khatri, Adv.

versus

KEVIN MARCUS WILLIAM GOVINDER SINGH OLAUSSON .....Respondent

Through: Mr. Tamradhwaj Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

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. Mr. Ritesh Khatri, learned counsel appearing for the petitioner contends that in view of two agreements dated 01.09.2016 and 29.03.2022, there exists a valid arbitration clause and if any dispute arises between the parties, the same is amenable to be adjudicated by the Arbitrator.

3. According to him, under the agreement, certain services were to be discharged/ rendered by the petitioner to the respondent as a consultant. He, therefore, contends that in lieu of the services having been rendered to the respondent, the petitioner is entitled for appropriate sum. According to him, as of now, a claim of Rs. 5.25 Crores is outstanding against the respondent which has not been paid.

4. The aforesaid submissions are vehemently opposed by Mr. Tamradhwaj Sharma, learned counsel appearing for the respondent.

5. Mr. Sharma points out that the instant is a case where a fraud has been committed by the petitioner. He submits that Manjeet Singh with whom the first agreement was executed had expired on 15.06.2021 and the agreement dated 01.09.2016 has only seen the light of the day after around eight years. According to him, even the second agreement has suddenly crept up after three years. He, therefore, contends that the claim raised in the petition is hopelessly time barred. According to him, firstly, there exists no valid agreement and secondly, there arise no question of any payment to the petitioner when the petitioner has not been able to satisfy as to what services have been rendered by the petitioner. He contends that there has to be some

contemporaneous record to establish such a position.

6. He further submits that even the original agreements have not been produced before this Court.

7. Reliance is placed on paragraph no. 52 of the decision of the Supreme Court in the case of ***N. Radhakrishnan vs. M/S. Maestro Engineers and Ors.***[1]

8. *Per contra*, Mr. Khatri places reliance on the decision of the Supreme Court in the case of ***Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re***[2].

9. Having considered the submissions made by learned counsel appearing for the parties and on perusal of the record, the Court finds that the clauses in the agreement dated 01.09.2016 and 29.03.2022 do contain an arbitration mechanism. The relevant clauses are extracted as under:-

> "**Primary Agreement dtd 01.09.2016**
>
> ***Dispute resolution clause-***
>
> *Dispute Resolution*
>
> *Any dispute or difference whatsoever arising between the parties out of or relating to the operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996."*
>
> "**Secondary Agreement dtd 29.03.2022**
>
> ***Dispute resolution clause-***

[1] (2010) 1 SCC 72

[2] (2024) 6 SCC 1

Dispute Resolution:

Any dispute or difference 1vhatsoever arising benveen the parties out of or relating to the operation or effect of ARB.P.-150-2025 27 this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996."

10. With respect to the submissions of Mr. Sharma, who contends that on account of the fraud and the claim being time-barred, the Court should not appoint the arbitrator, the legal position has been enunciated by this Court in the case of ***Axis Finance Limited v. Mr. Agam Ishwar Trimbak***[3].

11. In ***Axis Finance Limited***, the Court, while considering the decision of the Constitution bench of the Supreme Court in the case of ***Interplay*** has held as under:

31. From the discussion above, it is apparent that objections pertaining to a dispute not being arbitrable owing to fraud or forgery cannot be considered by a Court under Section 11(6) of the Act. Further, claims of a concerned arbitration agreement not existing under Section 7(1) owing to fraud or forgery, in an overwhelming majority of cases, require determination through the means of evidence tendered by the parties.

32. This examination of evidence by a Court, and the application of judicial mind to it, usually causes a Court to traverse beyond the Lakshman Rekha set forth under Section 11(6A). The review of contested evidence, and the reaching of conclusions on the basis of it, no longer remains a prima facie inquiry and is also against the legislative intent of Section 11(6A) as discussed above.

33. The arbitration tribunal evidently is better placed to review the entire record, evidence within it, and thereafter come to a conclusion. A similar view has been taken by the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning*** *where the Supreme Court, after declaring the scope of inquiry under Section 11 of the Act to be narrow, at para. 125 notes the arbitral tribunal to be better equipped to deal with objections of frivolity and dishonesty. The material part of the judgement is as follows:*

[3] 2025:DHC:7477

"125. We are also of the view that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral Court. If the referral Court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material."

34. In ***Goqii Technologies Pvt. Ltd. v. Sokrati Technologies Pvt. Ltd.,***[4] *the petitioner therein prayed for the appointment of an arbitrator to resolve the dispute which had allegedly arisen between the petitioner and the respondent therein. The dispute as agitated in the petition related to the respondent engaging in, inter alia, fraudulent activities, the same being allegedly confirmed by an independent external audit report, and the petitioner resultantly withholding certain payments it had to make to the respondent therein under a particular contract.*

35. The Bombay High Court in ***Goqii*** *analysed and appreciated the contents of the report of the external auditor/consultant and found that it did not support the submissions made by the petitioner therein. The claim of the petitioner was further found to be dishonest. Material part of the judgement is reproduced as under:*

19.1. A manifestly dishonest claim or a contest, which is sought to be raised to a lawful demand of the money due and payable under the MSA, particularly, when, while availing the services, at no point of time, any deficiency in services is pointed out, but only by way of defence to the invoices raised, an independent agency's report is being projected, as a support to canvass the deficiency in service, by attributing fraudulent acts to the respondent which, in fact, is not the finding of the independent auditor.

36. A Three Judge Bench of the Supreme Court in ***Goqii Technologies Pvt. Ltd. v. Sokrati Technologies Pvt. Ltd.***[5] *applying the dicta of* ***Krish Spinning*** *and* ***In Re: Interplay*** *reversed the judgement of the High Court, finding it to be erroneous. The Supreme Court further reiterated the scope of Section 11 to be narrow, limited, and not extending to a detailed examination of the factual matrix. The material part of the judgement reads as under:*

"19. The scope of inquiry under Section 11 of the 1996 Act is limited to ascertaining the prima facie existence of an arbitration agreement. In the

[4] 2024 SCC OnLine Bom 3530
[5] (2025) 2 SCC 192

present case, the High Court exceeded this limited scope by undertaking a detailed examination of the factual matrix. The High Court erroneously proceeded to assess the auditor's report in detail and dismissed the arbitration application. In our view, such an approach does not give effect to the legislative intent behind the 2015 Amendment to the 1996 Act which limited the judicial scrutiny at the stage of Section 11 solely to the prima facie determination of the existence of an arbitration agreement.

20. As observed in Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., 2024 SCC OnLine SC 1754] , 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."

37. In a recent decision, the Supreme Court in ***Bihar State Food and Civil Supply Corporation Ltd. and Anr. v. Sanjay Kumar***[6] *dealt with the scope of Section 11(6) of the Act and objections to a petition on grounds of criminality involving, inter alia, serious fraud. The issue VI of the judgement as formulated by their Lordships in the judgement reads:*
"VI. Re: Issue No. 6: Scope of enquiry by the referral Court when an application under Section 11(6) of the Act is opposed on the grounds of serious fraud."

38. The Supreme Court relying upon ***In Re: Interplay*** *affirmed the judgement of the High Court which allowed the petition of the respondent therein for the appointment of an arbitrator under Section 11(6) of the Act. In eloquent words their Lordships held that the scope of inquiry under Section 11(6) of the Act is to be confined to an examination of the existence of an arbitration agreement. The material portion of the judgement reads as under:*

> *"25.* ***In the seven judges bench decision, this Court considered in detail the separability of the arbitration agreement from the contract, the empowerment of the arbitral tribunal to examine its own competence and finally the limits of referral Courts scrutiny****...*
> *...*
> *27****. The curtains have fallen. Courts exercising jurisdictions under Section 11(6) and Section 8 must follow the mandate of sub-section (6A), as interpreted and mandated by the decisions of this Court and their scrutiny must be "confine(d) to the examination of the existence of the arbitration agreement".***
>
> *28.* ***We have examined the matter in detail. There is an arbitration agreement. The matter must end here. While we agree with Mr. Ranjit Kumar submissions that his client has much to say, let all***

[6] 2025 SCC OnLine SC 1604

that be said before the arbitral tribunal. It is, as we have said elsewhere, just as necessary to follow a precedent as it is to make one*.*

29. All the issues raised by Mr. Ranjit Kumar, senior counsel are kept open for being raised and contested before the arbitral tribunal. The issues that we have not taken up and left it to the arbitral tribunal are jurisdictional issues, involving barring of the arbitral proceedings due to limitation or for the reason that they are non-arbitrable. These issues shall be taken up as preliminary issues and the arbitral tribunal will consider them after giving opportunity to all the parties."

[Emphasis supplied]

……

44. The conclusions reached by this Court are as under:

a. The scope of inquiry under Section 11 and Section 8 of the Act are fundamentally different. While the former is concerned with the existence of an arbitration agreement; the latter involves an examination of the validity and existence of an arbitration agreement.

b. The scope of inquiry under Section 11(6) of the Act is legislatively curtailed by Section 11(6A), which serves as the Laksham Rekha, beyond which a Court must not traverse.

c. The validity and existence of an arbitration agreement are to be examined at the touchstone of Section 7 of the Act where issues pertaining to arbitrability of the dispute have no place.

d. To meet the existence requirement of Section 11(6A) a Court must prima facie be satisfied that an agreement exists between parties that when a dispute or a category of disputes arise between them, the same shall be decided by a private adjudicator/tribunal whose decision shall bind the parties so reaching an agreement. Once this requirement is met, the Court concerned must refer the parties to arbitration.

e. In the facts of the instant case this Court is satisfied that there exists an arbitration agreement between the petitioner and the respondent. The requirements of Section 11(6A) have been satisfied and resultantly this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties."

12. It is thus seen that the Supreme Court in eloquent words, has held that the scope of inquiry under Section 11 and Section 8 of the Act are fundamentally different. While the former is only concerned with the *existence* of an arbitration agreement; the latter involves an examination of

the *validity* and *existence* of an arbitration agreement.

13. In view of the aforesaid, it is seen that the existence of an arbitration clause is not disputed by Mr. Sharma. Therefore, reserving all submissions and objections of the parties, it is seen that the allegation regarding fraud and the non-entitlement of the petitioner can very well be examined by the sole arbitrator.

14. 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. Justice Brijesh Sethi, Former Judge, Delhi High Court (Mobile No. +91 9910384669, e-mail id: sethi.brijesh4@gmail.com) as the sole Arbitrator.

15. 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.

16. 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.

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

18. 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.

19. 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 the copy of the said order be sent to the Arbitrator through the electronic mode as well.

20. Furthermore, at this stage, it is apposite to direct that the petition under Section 9 of the Act bearing no. O.M.P.(I) (COMM.) 57/2025 shall be treated to be an application under Section 17 of the Act

21. Accordingly, petitions, along with pending application, stand disposed of.

PURUSHAINDRA KUMAR KAURAV, J

SEPTEMBER 18, 2025
p/mj