



2025:DHC:8626



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 868/2025**

Date of Decision: **18.09.2025****IN THE MATTER OF:**

AXIS FINANCE LIMITED

.....Petitioner

Through: Mr. Pragun Bagla and Mr. Shikhar
Gupta, Advs.

versus

K RAVI KISHAN REDDY

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. Affidavit of service is extracted as under:

"I, Shikhar Gupta, S/o Sh. Mahesh Gupta, aged about 30 years, having office at 16, 2nd Floor, Wazirpur Industrial Area, Delhi - 1110052, do hereby

solemnly affirm and declare as under:

1. That I am the Counsel for the Petitioner in the captioned matter and hence, I am competent to swear the present Affidavit.

2. That the Respondent were served on their email address i.e. ravi.iare@gmail.com on 31.07.2025 through my email i.e. shikhargupta@advsglegal.in, the proof of the same has been enclosed. The said email was delivered and has not bounced or received back as undelivered.

3, That the Respondents were also served with the summons along with the copy of the petition by way of Speed post and the tracking reports of the same have been enclosed."

2. The service is effected through e-mail as well as by Registered post.



3. Since no one appears for the respondent, the Court proceeds to decide the matter.
4. Facts of the case would indicate that an loan agreement dated 18.12.2023 for an amount of Rs.29,30,220/- was executed between the petitioner and the respondent .
5. As per the case of the petitioner, the respondent defaulted in fulfillment of his repayment obligation. It is further stated that the petitioner owing to the respondent's default in fulfillment of its repayment obligations, was constrained to send a loan recall notice/demand notice to the respondent demanding an amount of Rs. 26,50,456/- as on 15.04.2024.
6. Learned counsel appearing for the petitioner has also drawn the attention of the Court to clause 19 of the agreement which is extracted as under:

“19. ARBITRATION

All and any dispute/s, differences arising out of or in connection with this Agreement and/or Facility Documents and the Schedule of the Terms attached thereto, controversy or claim arising out of or relating to this Agreement and Facility Documents, including its construction, meaning, scope or validity thereof, or compliance with the provisions of the Facility Documents shall be resolved and settled, by arbitration only in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereto and shall be referred to either a Sole Arbitrator to be appointed by the Lender out of the panel of Arbitrators or shall be referred to an Arbitration Centre, an independent institution, appointed by the Lender and the Parties shall be at liberty to select the Arbitrator from the panel of the Arbitrators of Lender or the Arbitration Centre.

Borrower agrees that in the event of any dispute, differences arising out of or in connection in any of the Facility Documents (such as any personal guarantees executed by the Borrower / Personal Guarantors and/or any Corporate Guarantees, Deed of Hypothecation etc.) including any additional documents executed by the Borrower or any additional facility / top-up / ad-hoc facility taken by the Borrower from the Lender herein such disputes shall be treated as a single reference to the Arbitrator.

Lender shall address a notice to the Borrower suggesting the names of not



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more than three (3) Arbitrators. Borrower shall either: a) Confirm in writing acceptance of any one amongst the propose names as the Sole Arbitrator to the Lender within a period of 7 days from the date of notice; b) Convey its objection, if any, in writing to the Lender against the proposed names of the Sole Arbitrator within the aforesaid period of 7 days.

However, if the Lender does not receive any response from the Borrower within the aforesaid period of 7 days, the Lender shall be entitled to nominate any one person from amongst the propose three names as the Sole Arbitrator and such Arbitrator shall be treated as Arbitrator appointed by mutually by the parties.

Borrower has given his/her/its consent for either appointment of sole Arbitrator or arbitration to be conducted by the Arbitration Centre, more particularly mentioned in Annexure I to this Agreement.

The seat for such Arbitration shall be Mumbai and/or Delhi, as may be determined by the Lender and which may be administered electronically under Online Dispute Resolution (ODR), in accordance with its Dispute Resolution Rules ("Rules") of the Independent Arbitration Centre. The costs of such arbitration shall be borne by the Borrower(s). The language of the arbitration proceedings shall be English. The award, including interim award given by the Arbitrator shall be final and binding upon all the parties to this Agreement and also the Facility Documents. The provisions of this Clause shall continue to be in force in respect of any question, dispute or claim as mentioned in this Clause notwithstanding the repayment of all dues under the Facility.

The parties agree to have their disputes resolved by Fast Track procedure as specified in section 29B of the Arbitration and Conciliation Act, subject to and in accordance with, the procedure which the Arbitrator may lay down from time to time to conduct Arbitration proceedings and the Sole Arbitrator or the Arbitration Centre shall conduct Arbitration Proceedings in such manner as he/it may deem appropriate as per section 29B of the said Act.

If a party is required to enforce an arbitral award by legal action of any kind, the party against whom such legal action is taken shall pay all reasonable costs and expenses and attorneys' fees, including any cost of additional litigation or arbitration taken by the party seeking to enforce the award. The provision of arbitration clause contained herein shall continue in force in respect of any question, dispute or claim as mentioned in clause above notwithstanding the repayment of Facility.

The terms of Facility shall be governed by the Laws of India and shall be subject to the exclusive jurisdiction of courts and tribunals in Mumbai and/or Delhi.

Borrower(s) hereby expressly acknowledges, agrees, confirms and admits that the Borrower(s) has fully read, verified, understood and irrevocably agreed to and accepted and delivered all the terms, conditions and



provisions contained herein and the Schedule of Terms of Facility by signing this Agreement.

Borrower(s) has executed this Arbitration Agreement with full knowledge and understanding of the obligations herein willingly undertaken, agreed and accepted and/or the Borrower(s) agrees that the complete terms and conditions of the terms of Facility have been explained in English or the vernacular language understood by the Borrower(s).

In the event of death, refusal, neglect, inability or incapability of the person so appointed to act as an Arbitrator the Lender may appoint a new Arbitrator.”

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, as well, has extensively dealt with the scope of interference at the stage of Section 11. Furthermore, this Court, recently, in ***Axis Finance Limited Vs. Mr. Agam Ishwar Trimbak***² has held that the scope of inquiry under Section 11 of the Act has been 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

¹ 2025 SCC OnLine Del 3022

² 2025:DHC:7477



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 7. Similarly, 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 competence-competence, 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. 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 Spinning³ 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

³ 2024 SCC OnLine SC 1754



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 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*

⁴ 2025 SCC OnLine SC 1471



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, reserving all submissions and objections of the parties, this Court appoints Mr. Sharath Nambiar, Advocate (Mobile No. +91 9933964773, e-mail id: advsharathnambiar@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.



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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.

PURUSHAINDR KUMAR KAURAV, J

SEPTEMBER 18, 2025/p/mj