



2025:DHC:7177



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

+ ARB.P. 1077/2025

Date of Decision: **19.08.2025**

IN THE MATTER OF:

RAILTECH TECHNOLOGIES PVT LTD

.....Petitioner

Through: Mr. Shyam Sunder Gangwar, Adv.

versus

UNION OF INDIA

.....Respondent

Through: Mr. Dev Pratap Shahi, Mr. Yogya Bhatia and Mr. Varun Pratap Singh, Adv. for Mr. Rohan Jaitley, CGSC.

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 1996 Act) by the petitioner, seeking appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties.

2. The facts of the case reveal that in pursuance to the tender dated 25.02.2024 floated by the respondent, the petitioner was the successful bidder and vide purchase order dated 20.01.2024, the respondent awarded



the said tender for supply of Underframe complete for VB Metro TC, DTC & MC alongwith items supports for floor and seats welded on Underframe.

3. During the subsistence of the contract, the petitioner requested for the extension of the delivery period by various letters. As per the petitioner's case, the same were not responded to.

4. It is submitted that the respondent, thereafter, issued cancellation advice and recovery notice. The petitioner under those circumstances invoked Clause 2900 of Indian Railway Standards Conditions of contract (IRS) vide notice dated 01.03.2025. According to petitioner, despite service of the notice, the respondent has not acted. Therefore, the petitioner has approached this Court by way of the instant petition.

5. The Court on 28.07.2025 directed for issuance of notice. Mr. Yogya Bhatia, learned counsel for the respondent- Union of India, on instructions, submits that the respondent do not have any objection in case, the Court considers to appoint the Arbitrator for adjudication of the dispute.

6. Clause 2900 of the IRS is extracted as under:

“2900. Arbitration.

(a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units; by any Member of the Railway Board, in the case of contracts entered into by the Railway Board and by the Head of the Organisation in respect of contracts entered into by the other Organisations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference. The award of the arbitrator shall be final and binding on the



parties to this contract.

(b) In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

(c) It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to 'arbitration at all.

(d) The arbitrator may from time-to-time with the consent of all the parties to the contract enlarge the time for making the award.

(e) Upon every and any such reference, the assessment of the cost incidental to the reference and award respectively shall be in the discretion of the arbitrator.

(f) Subject as aforesaid, the Arbitration Act, 1940 and the rules there under and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause.

(g) The venue of arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator at his discretion may determine.

(h) In this clause the authority, to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.”

7. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. This Court as well in the order dated 24.04.2025 in case of ARB.P. 145/2025 titled as ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd*** has extensively dealt with the scope of interference at the stage of Section 11.

The Court held as under:-

*“9. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. The Supreme Court in the case of **SBI General Insurance Co. Ltd. v. Krish***



Spinning¹, while considering all earlier pronouncements including the Constitutional Bench decision of seven judges in the case of **Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re**² has held that scope of inquiry at the stage of appointment of an Arbitrator is limited to the extent of prima facie existence of the arbitration agreement and nothing else.

10. It has unequivocally been held in paragraph no.114 in the case of **SBI General Insurance Co. Ltd** that observations made in **Vidya Drolia v. Durga Trading Corpn.**³, and adopted in **NTPC Ltd. v. SPML Infra Ltd.**⁴ 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 not apply after the decision of **Re: Interplay**. The abovenoted paragraph no.114 in the case of **SBI General Insurance Co. Ltd** reads 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)*.”

11. Ex-facie frivolity and dishonesty are the issues, which have been held to be within the scope of the Arbitral Tribunal which is equally capable of deciding upon the appreciation of evidence adduced by the parties. While considering the aforesaid pronouncements of the Supreme Court, the Supreme Court in the case of **Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd.**⁵, however, has held that the referral Courts under Section 11 must not be misused by one party in order to force other parties to the arbitration agreement to participate in a time-consuming and costly arbitration process. Few instances have been delineated such as, the adjudication of a non-existent and malafide claim through arbitration. The Court, however, in order to balance the limited

¹ 2024 SCC OnLine SC 1754

² 2023 SCC OnLine SC 1666.

³ (2021) 2 SCC 1.

⁴ (2023) 9 SCC 385.

⁵ (2025) 2 SCC 192



scope of judicial interference of the referral Court with the interest of the parties who might be constrained to participate in the arbitration proceedings, has held that the Arbitral Tribunal eventually may direct that the costs of the arbitration shall be borne by the party which the Arbitral Tribunal finds to have abused the process of law and caused unnecessary harassment to the other parties to the arbitration.

12. *It is thus seen that the Supreme Court has deferred the adjudication of aspects relating to frivolous, non-existent and mala fide claims from the referral stage till the arbitration proceedings eventually come to an end. The relevant extracts of **Goqii Technologies (P) Ltd.** reads as under:-*

“20. As observed in Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754 : 2024 INSC 532] , 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.

21. Before we conclude, we must clarify that the limited jurisdiction of the referral courts under Section 11 must not be misused by parties in order to force other parties to the arbitration agreement to participate in a time consuming and costly arbitration process. This is possible in instances, including but not limited to, where the claimant canvasses the adjudication of non-existent and mala fide claims through arbitration.

22. With a view to balance the limited scope of judicial interference of the referral courts with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration. Having said that, it is clarified that the aforesaid is not to be construed as a determination of the merits of the matter before us, which the Arbitral Tribunal will rightfully be equipped to determine.”

13. *In view of the aforesaid, the scope at the stage of Section 11 proceedings is akin to the eye of the needle test and is limited to the extent of finding a prima facie existence of the arbitration agreement and nothing beyond it. The jurisdictional contours of the referral Court, as meticulously delineated under the 1996 Act and further crystallised*



*through a consistent line of authoritative pronouncements by the Supreme Court, are unequivocally confined to a prima facie examination of the existence of an arbitration agreement. These boundaries are not merely procedural safeguards but fundamental to upholding the autonomy of the arbitral process. Any transgression beyond this limited judicial threshold would not only contravene the legislative intent enshrined in Section 8 and Section 11 of the 1996 Act but also risk undermining the sanctity and efficiency of arbitration as a preferred mode of dispute resolution. The referral Court must, therefore, exercise restraint and refrain from venturing into the merits of the dispute or adjudicating issues that fall squarely within the jurisdictional domain of the arbitral tribunal. It is thus seen that the scope of enquiry at the referral stage is conservative in nature. A similar view has also been expressed by the Supreme Court in the case of **Ajay Madhusudan Patel v. Jyotrindra S. Patel**⁶.*

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. Siddharth Sharma, Advocate (Mobile No. +91 7400111111, e-mail id: siddharthsharma047@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 1996 Act.
10. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the 1996 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

⁶ (2025) 2 SCC 147.



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expression of opinion of this Court on the merits of the controversy. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.

14. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 19, 2025

aks/mj