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

\+ ARB.P. 129/2025

Date of Decision**: 24.04.2025**

IN THE MATTER OF:

SIEMENS FINANCIAL SERVICES PVT LTD .....Petitioner

Through: Mr. Asav Rajan, Adv.

versus

DR VIKAS SAROHA & ANR. .....Respondents

Through: None.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the 1996 Act), seeking appointment of an Arbitrator to adjudicate upon the dispute between the parties, in terms of the Finance cum Hypothecation Agreement dated 29.03.2019.

2. The service report placed by the Registry indicates that notices have been served upon the respondents, despite that nobody appears on behalf of the respondents.

3. A perusal of the petition indicates that the petitioner is a non-banking financial corporation. On 19.03.2019, respondent No.1 applied for a loan facility, wherein respondent No.2 stood as guarantor. Pursuant thereto, a loan was sanctioned *vide* a sanction letter bearing reference No. 8988592-1.

On 29.03.2019, respondent No.1 executed Finance cum Hypothecation Agreement bearing no. A8988592 *(hereinafter referred to as Finance Agreement*) with the petitioner for availing a loan facility to the tune of Rs. 63,75,000 and hypothecated Vivid E 95V 202 CMV Unit with four probes (1 No.), in favour of the petitioner.

4. Thereafter, as per the plaint, on the even date, a promissory notice was provided to the petitioner under the signature of respondent No.2 in the capacity of guarantor, for the loan facility availed by respondent No.1. It is the case of petitioner that respondent No.1 appears to have made certain repayments. Thereafter, on 09.09.2024, the petitioner appears to have issued statement of account of the respondent No.1 along with pre-termination statement indicating the outstanding amount to the tune of Rs.56,97,110/-.

5. It is also seen from the petition that on 19.11.2024, the petitioner issued the demand notice for recall of loan and invocation of arbitration under the agreement, and since the respondents did not act upon the same, the petitioner by invoking Clause 13(e) of the Agreement in question has instituted the instant proceedings.

6. At this stage, the Court takes note of Clause 13 (e) of the Finance Agreement dated 29.03.2019, which reads as under:-

> *"13*
> *(e). Arbitration:*
> *All disputes, differences and/or claim arising out of or in connection with this Agreement and the Schedule(s) attached hereto or the performance of this Agreement shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to the sole Arbitrator nominated/appointed by the Lender. The place of arbitration shall be Delhi and the award given by such an Arbitrator shall be final and binding on the parties to this Agreement."*

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 Spinning,***[1] *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.*
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> *10It 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:-*
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> > *"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)."*

[1] 2024 SCC OnLine SC 1754.
[2] 2023 SCC OnLine SC 1666.
[3] (2021) 2 SCC 1.
[4] (2023) 9 SCC 385.

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 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 malafide 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.*
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> ***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.*
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> ***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."*

[5] (2025) 2 SCC 192.

> *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 that there is an arbitration clause in the contract, accordingly, Mr. Santosh Kumar (Mobile No. +91-93107-47175 and email: santoshkrs01@gmail.com) is appointed as the sole Arbitrator.

9. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "A&C Act").

10. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C 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

[6] (2025) 2 SCC 147.

claims/counterclaims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.

13. 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.

14. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.

15. Accordingly, the instant petition stands disposed of

PURUSHAINDRA KUMAR KAURAV, J

APRIL 24, 2025/DPA/MJ

Click here to check corrigendum, if any