



2025:DHC:3260



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

+ **ARB.P. 145/2025 and I.A. 7083/2025**

Date of Decision: **24.04.2025**

IN THE MATTER OF:

PRADHAAN AIR EXPRESS PVT LTD

A Company incorporated under the provisions
of Companies Act, 2013 (as amended till date),
having its Registered Office at
A 250, Ground Floor, Road No.6
Mahipalpur, South West Delhi,
Through its representative:
Mr. Badri Prasad
Email Id: badri@pradhaanair.com

.....Petitioner

(Through: Mr. Arpit Dwivedi, Ms. Sakshi Kapoor and Mr. Manmeet Singh Nagpal, Advs.)

versus

AIR WORKS INDIA ENGINEERING PVT LTD

A Company incorporated under the provisions
Of Companies Act, 1956 and validly existing under
the provisios of Companies Act, 2013 (as amended till date),
having its Registered Office at:
Mumbai International Airport,
Gate No.8, Near Kalina Military Camp,
Santacruz E, Mumbai-400 029
Through its representative
Mr. Anand Bhaskar Dhanyamraju
Email Id: Deepak.goyal@airworks.in

.....Respondent

(Through: Mr. Abhay Chitravanshi with Mr. Rajat Choudhary, Advs.)



HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

JUDGEMENT

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “1996 Act”), seeking the appointment of an Arbitrator to adjudicate upon the disputes between the parties, in terms of the Arbitration Clause 25(3) of the General Terms Agreement (hereinafter referred to as “GTA”) dated 13.06.2022.
2. It is seen that the reply on behalf of the respondent has been filed, which essentially raised certain objections with respect to the non-entitlement of the claims set up by the petitioner.
3. A perusal of the petition indicates that the parties entered and executed the GTA on 13.06.2022, wherein, the respondent undertook to provide Maintenance, Repair, and Overhaul (hereinafter referred to as “MRO”) services to the petitioner. It is the case of the petitioner that during the subsistence of the GTA, owing to certain unforeseen circumstances, the only operational aircraft of the petitioner was grounded and remained in an Aircraft on Ground (hereinafter referred to as “AOG”) condition between 23.09.2023 and 15.10.2023.
4. According to the petitioner, during the said period, no MRO services were availed or rendered by the respondent, and subsequently, the respondent appears to have temporarily suspended its services under the GTA. Thereafter, on 01.05.2024, the respondent permanently suspended its services under the GTA Agreement, and *vide* notice dated 08.05.2024, the petitioner highlighted the arbitrary and unlawful conduct of the respondent.



5. The petitioner, thereafter on 16.09.2024 issued a notice invoking the Arbitration Clause of 25(3) under GTA to resolve and adjudicate all disputes between the parties.
6. However, on 04.10.2024, the respondent refused to nominate its nominee arbitrator on the ground that there exists no dispute between the parties. Aggrieved by the same, the petitioner has filed the present petition.
7. I have heard the learned counsel appearing for the parties and perused the record.
8. At this stage, the Court takes note of Clause 25(3) of the GTA, which reads as under:-

“3) Arbitration

- 1) *All disputes arising under this Agreement that remain unresolved pursuant to Article 25.1 may, as an alternative to court proceedings, be referred by either Party to arbitral tribunal comprising of three (3) arbitrators. Each Party to the arbitration shall appoint one arbitrator and the two arbitrators thus appointed should appoint the third arbitrator who will act as a presiding arbitrator of the tribunal {together forming the" Arbitral Tribunal"}. The arbitration proceedings shall be governed by the provisions of the Indian Arbitration and Conciliation Act, 1996 and/or any statutory re-enactment, amendment. or modifications thereof for the time being in force.*
- 2) *The decision(s) of the Arbitral Tribunal shall be final and binding on both the Parties.*
- 3) *The venue of the arbitration shall be at New Delhi, India.*
- 4) *This Article 25 shall survive the termination or expiry of this Agreement.*
- 5) *The language of arbitration shall be English*
- 6) *Any award or other decision of the Arbitral Tribunal shall be made by a majority of the arbitrators. In addition to making a final award, the Arbitral Tribunal shall be entitled to make interim, interlocutory or partial awards. Any award may be enforced against the Parties of their assets wherever they may be found, or judgements upon the arbitration may be entered in any Court having jurisdiction thereof. Subject to a specific award of costs by the Arbitral Tribunal, each Party shall bear its own costs of the arbitration.*



7) *Notwithstanding the foregoing, either Party may before commencement of, during or after the termination of the arbitration proceedings, apply to any Court of competent jurisdiction for a temporary restraining order preliminary injunction, or other interim or conservatory relief, as necessary. Such application shall not be deemed to be an infringement or a waiver of the arbitration agreement herein and shall not affect the relevant powers reserved to the Arbitral Tribunal”*

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.

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

¹ 2024 SCC OnLine SC 1754.

² 2023 SCC OnLine SC 1666.

³ (2021) 2 SCC 1.

⁴ (2023) 9 SCC 385.



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 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

⁵ (2025) 2 SCC 192.



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.

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.

14. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

15. Accordingly, Mr. Jagat Singh, Advocate, (Mobile No.+91-9671984628 and Email-ID-reachjagat@yahoo.com) is appointed as the sole Arbitrator.

16. 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.

17. The learned arbitrator is also requested to file the requisite disclosure under Section 12 (2) of the 1996 Act within a week of entering on reference.

⁶ (2025) 2 SCC 147.



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18. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.
19. 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.
20. The petition, alongwith pending application stand disposed of in the aforesaid terms.

PURUSHAINdra KUMAR KAURAV, J

APRIL 24, 2025/DPA/MJ/@m

Click here to check corrigendum, if any