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

\+ **ARB.P. 464/2025**

Date of Decision**: 27.05.2025**

IN THE MATTER OF:

TATA CAPITAL LIMITED
THROUGH ITS AUTHORIZED REPRESENTATIVE:
SH. NISHANT GAUTAM

HAVING ITS REGISTERED OFFICE AT:

11th FLOOR, TOWER A,
PENINSULA BUSINESS PARK, GANPATRAOKADAM MARG,
LOWER PAREL, MUMBAI,
MAHARASHTRA, 400013
AND BRANCH OFFICE AT:
9th FLOOR, VIDEOCON TOWER,
JHANDEWALAN EXTENSION BLOCK E,
DELHI-110055 ..... PETITIONER

Through: Mr.Nachiketa Vijay Suri and Mr.Rajkumar Dahiya, Advocates.

Versus

RISHAB SHARMA
S/O RAM PRAKASH SHARMA
R/O PLOT NO. 89, S-2 BAJRANG DHAM-9,
TIRUPATI VIHAR, GOVINDPURA KALWAR ROAD
JAIPUR, RAJASTHAN – 302012

Also at:

HIMALAYA STORE, G -1
JAGDAMBA TOWER, AMRAPALI CIRCLE

VAISHALI NAGAR, JAIPUR
RAJASTHAN - 302021 .... RESPONDENT

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(6) 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 under the Loan Agreement dated 24.12.2019.

2. A perusal of the record would indicate that notice was directed to be issued to the respondent on 18.03.2025. On 29.04.2025, the respondent was represented through counsel and time was sought to file the reply. Again on 14.05.2025, time was granted to the respondent to enable him to file the reply and hearing of the instant case stood deferred for today. Even today, there is no representation on behalf of the respondent, despite the matter being called out in the second round. Even no reply has been placed on record.

3. As per the case set up by the petitioner, it sanctioned a personal loan of an amount of Rs.10,00,000/- along with interest at the rate of 11.49% which was to be paid in 60 EMIs of Rs.21,988/- each on the 5th day of every month. Accordingly, a Loan Agreement dated 24.12.2019 was executed

between the parties. Respondent appears to have made a partial payment of the loan amount. Thereafter, the respondent defaulted and neglected to pay various EMIs since 05.04.2023 and defaulted on the payments of EMIs as evident from the Statement of Account which is duly maintained by the petitioner in the regular course of its business. The respondent has also defaulted in adhering to the financial discipline as mentioned above.

4. Accordingly, the petitioner issued a legal notice dated 31.12.2024 invoking the arbitration clause (Clause 9) of the Loan Agreement dated 24.12.2019, seeking the appointment of a Sole Arbitrator.

5. The Court takes note of Clause 9 of the Loan Agreement dated 24.12.2019, which reads as under:-

> ***"9. Arbitration***
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> *If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held in [Mumbai/Delhi/Kolkata/Chennai] as may be decided by the Lender in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the Obligors."*

6. 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 the 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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> *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:-*
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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)."*

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[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*

[5] (2025) 2 SCC 192

> *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."*
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> *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].

9. 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 same.

10. Accordingly, Mr. Rohit Nagpal (Mobile No.+91-9811601211, e-mail id:-rohitnagpal2211@gmail.com) is appointed as the sole Arbitrator.

[6] (2025) 2 SCC 147.

11. 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.

12. 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.

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

14. 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.

15. 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.

16. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

MAY 27, 2025
Nc/@m

Click here to check corrigendum, if any