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

+ **ARB.P. 383/2025**

Date of Decision: **29.04.2025**

IN THE MATTER OF:

CARS24 SERVICES PRIVATE LIMITEDPetitioner

Through: Mr.Rit Arora and Mr.Anurag Arora,
Advocates.

Versus

ANANTHARAJ T PROPRIETOR OF M/S THURAIYUR CARS

.....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(5) of the Arbitration and Conciliation Act, 1996 (the 1996 Act) by the petitioner, seeking appointment of an Arbitral Tribunal to adjudicate upon the disputes that have arisen between the parties under the Credit Program Agreement dated 07.02.2019.
2. The office report indicates that the service on all the respondents stands complete.
3. Learned counsel for the petitioner submits that the petitioner is a Private Limited Company, which, in the regular course of its business, provides a revolving Finance/Credit Facility to business entities for the purchase of pre-owned cars, with the purpose of reselling them to end



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customers. He further submits that the respondent is the Sole Proprietor of M/s Thuraiyur Cars and is a borrower under the said facility, and also the signatory to the Credit Program Agreement dated 07.02.2019. It is contended that the petitioner, relying on the respondent's creditworthiness, as well as his assurances and commitments, extended the credit facility and executed the said agreement. According to the petitioner's case, the respondent had agreed to repay each loan amount within 60 days from the date of disbursement, along with applicable interest charges.

4. Learned counsel for the petitioner also submits that, at the time of the execution of the Credit Program Agreement, the respondent has undertaken and personally assured the petitioner that he would maintain financial discipline and make timely payment of all dues as per the agreement. However, due to the respondent's failure to adhere to such commitments, disputes have arisen between the parties.

5. Learned counsel further submits that, on 06.11.2024, the petitioner company issued a Finance/Credit Facility Recall Notice, terminating the credit facility granted to the respondent and demanding repayment of the outstanding amount within seven days of receipt of the notice. He states that the respondent neither responded to the said notice nor repaid the outstanding dues and charges. Despite multiple reminders, the respondent has failed to clear the outstanding amount. As of 08.02.2025, a sum of Rs. 2,86,799/- remains due and payable by the respondent to the petitioner company.

6. The facts of the case further indicate that the respondent has failed to



repay the outstanding loan amount and has not complied with the terms and conditions of the Credit Program Agreement dated 07.02.2019. Being aggrieved, the petitioner company issued a notice dated 18.11.2024, invoking the arbitration clause (Clause 8.1) of the said agreement, seeking the appointment of a Sole Arbitrator.

7. The Court takes note of the Clause 8.1 of the Credit Program Agreement dated 07.02.2019, which reads as under:-

“8.1. Dispute Resolution. In case of any difference(s) and/or dispute(s) arising out of the Agreement shall be mutually settled between the parties within (Three) 3 days of any such dispute being referred by any aggrieved party to the other. In the event of any such difference(s) and/or dispute(s) and/or any part thereof not amicably settled between the parties within the stipulated time may be referred to an Arbitration Tribunal consisting of a sole arbitrator to be appointed by the Company. The award passed by the said Arbitration Tribunal shall be final and binding upon the parties. The language shall be English and the venue shall be New Delhi.”

8. 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**, 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** 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.**, and adopted in **NTPC Ltd. v. SPML Infra Ltd.**, 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.**, 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.

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



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expressed by the Supreme Court in the case of Ajay Madhusudan Patel v. Jyotrindra S. Patel.”

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 parties.

10. Accordingly, Mr. Ishaan Seth, Advocate (Mobile No.-8527509899, e-mail id- ishaan.seth2000@gmail.com) is appointed as the sole Arbitrator.

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 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. The petition stands disposed of in the aforesaid terms.

PURUSHAINDR KUMAR KAURAV, J

APRIL 29, 2025

Nc/sph

Click here to check corrigendum, if any