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

\+ ARB.P. 653/2025

Date of Decision**: 29.04.2025**

IN THE MATTER OF:

M/S K.K. CONSTRUCTIONS .....Petitioner

Through: Mr. Abhishek Pandey and Mr. Ramesh Pandey, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL .....Respondent

Through: Mr. Akshay Verma, ASC and Mr. Ravi Chandra, Adv.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

I.A. 10374/2025 (Exemption)

1. Allowed, subject to all just exceptions

2. The application stands disposed of.

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3. 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 dispute between the parties, in terms of Clause 25.2 of the agreement.

4. At the inception, while the Court was inclined to issue notice, learned

counsel for the respondent, appearing on advance notice, raised a preliminary objection regarding maintainability. He invites attention to Clause 25.2 of the Agreement, contending that unless conciliation proceedings stipulated therein are availed, the petitioner is precluded from invoking arbitration.

5. Learned counsel appearing for the petitioner, however, refers to Clause 25.2 and submits that the language explicitly renders the conciliation process optional, thereby permitting invocation of arbitration independently, without necessarily resorting to conciliation under Clause 25.1.

6. On examining Clause 25.2, it appears unequivocally clear that the parties have indeed contemplated conciliation as an optional, rather than a mandatory prerequisite. Accordingly, the objection raised by the respondent regarding the premature nature of the present petition lacks merit and stands rejected.

7. The Court takes note of the Arbitration Clause 25.2 of Agreement, which reads as under:-

> *"25.2. Arbitration:*
> *!f the aforesaid conciliation proceedings fail or the Conciliator fails to give proposal for settlement within the aforesaid period either party may promptly give notice in the performa prescribed in Appendix-XVIII, under intimation to the other party, to the Chief Engineer or the Superintending Engineer concerned with the work (as applicable),hereinafter referred to as the Arbitrator Appointing Authority as indicated in Schedule F, for appointment of Arbitrator.*
> *However, a party may seek appointment of Arbitrator without taking recourse to the process of conciliation mentioned in sub-clause 25.1 above.*
> *In the event of either party giving a notice to the Arbitrator Appointing Authority for appointment of Arbitrator, the said Authority shall appoint Arbitrator as per the procedure given below and refer such disputes to arbitration.*
> *(a) Name of Arbitrators: If the contract amount is less than Rs.100 Crore, the disputes may be referred to adjudication by a sole*

Arbitrator. If the contract amount is Rs.100 crore or more, the disputes may be referred to an Arbitral Tribunal of three Arbitrator.

(b) Qualification of Arbitrator: It is a term of this contract that each member of the Arbitral Tribunal shall be Graduate Engineer with experience in execution of public work engineering contracts, and he should have worked earlier at a level not lower than the Chief Engineer (equivalent to level of Joint Secretary to the Government of India)

(c) The aforesaid educational qualification and work experience shall be mandatory for appointment as Arbitrator.

8. Having considered the submissions advanced by both sides, it is seen that 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.*

*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***

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

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 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*

[5] (2025) 2 SCC 192.

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].*

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. Prabhav Ralli *(Mobile: +91-9999249666; e-mail : ralliprabhav93@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.

PURUSHAINDRA KUMAR KAURAV, J

APRIL 29, 2025/DPA/SP

Click here to check corrigendum, if any

[6] (2025) 2 SCC 147.