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

\+ **ARB.P. 739/2025**

Date of Decision**: 30.10.2025**

IN THE MATTER OF:

M/S MONEYWISE FINANCIAL SERVICES PVT LTD

.....Petitioner

Through: Ms. Mehwish Khan and Mr. Aman Choudhary, Advs.

versus

SH. SUBHASH MOTILAL PAWAR AND ANR

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. Learned counsel for the petitioner has produced the service affidavit and submits that the same shall be placed on record, during the course of the day. A copy, thereof, which has been handed over across the Bar, is extracted as under:

AFFIDAVIT

I, Mehvish Khan D/o Sh. Sajeed Khan Aged about 36, Counsel for the Petitioner Company, Having Chamber No 164, Civil Wing, Tis Hazari Courts, Delhi-110054, do hereby solemnly affirm as under: -

1. *That I am the Counsel for the Petitioner Company in the present petition and as such I am fully competent to swear this affidavit.*

2. *That I have attempted to serve the notice issued by the Hon'ble High Court along with copy of the petition with all annexures to all the Respondents on behalf of the Petitioner Company to all the email ids of the Respondents mentioned in the Loan Agreement/Documents on 22.08.2025, through my e-mail i.e. khanmehvish2189@gmail.com. The respondent No. 1 has replied to the said mail on 25.08.2025. The copy of the e-mail dated 22.08.2025 and 25.08.2025 is annexed herewith as* ***ANNEXURE – A*** *and the details and status of the same are tabulated as under:*

Respondent No.	***E-mail Address***	***Date of service***	***Status***
1 & 2	*subhashp@vinlled.com*	*22.08.2025*	*Mail was duly served as Respondent No. 1. Reply for the same.*
1 & 2	*subhashp@vinopto.com*	*22.08.2025*	*Bounced Back*
1 & 2	*subhashp1@vinlled.com*	*22.08.2025*	*Served*

3. *That I have duly served the notice issued by the Hon'ble High Court along with copy of the petition with all annexures to all the Respondents mentioned in the Loan Agreement/Documents on behalf of the Petitioner Company via WhatsApp on 23.08.2025 through WhatsApp number 7303451702. The screenshot of the WhatsApp messages is annexed herewith as* ***ANNEXURE – B*** *and the details and status of the same are tabulated as under:*

Respondent No.	***WhatsApp number***	***Date of service***	***Status***
1	*9820000926*	*23.08.2025*	*Delivered*
2	*9930361376*	*23.08.2025*	*Delivered*

4. *That I have sent the notice issued by the Hon'ble High Court along with copy of the petition with all annexures to the Respondent No. 1 on behalf of the Petitioner Company on their last known & correct address via Speed Post and Courier to the following addresses:*

S. No	***Address***	***Speed Post "Status"***	***Courier "Status"***
1	*306/307, MARATHON MAX, LBS MARG, OPP. NIRMAL LIFESTYLE, MULUND (WEST), MUMBAI, MAHARASHTRA-400080*	*Item Returned*	*Item Returned*
2	*501, A WING, SHIV SADHANA APARTMENT, CHAPHEKAR BANDHU MARG, MULUND EAST, MUMBAI, MAHARASHTRA-400081*	*In transit*	*Delivered*

3	*H.NO. 60, GALA G-5 BLDG., SHREE RAJLAXMI APPARELS & INDUSTRIAL PARK, NEAR KASHMIRA DHABA, VILLAGE POGAON, BHIWANDI-421302*	*Delivered*	*Item Returned*

4. *That I have sent the notice issued by the Hon'ble High Court along with copy of the petition with all annexures to the Respondent No. 2 on behalf of the Petitioner Company on their last known & correct address via Speed Post and Courier to the following addresses:*

S. No	***Address***	***Speed Post "Status"***	***Courier "Status"***
1	*501, A WING, SHIV SADHANA APARTMENT, CHAPHEKAR BANDHU MARG, MULUND EAST, MUMBAI, MAHARASHTRA-400081*	*In transit*	*Item Returned*

5. *The Postal Receipts, Courier Receipts along with their tracking reports are annexed herewith as* ***ANNEXURE – C (Colly).***"

2. There are two respondents and as per the service affidavit, both of them have been served. Despite service, none has appeared on their behalf. The Court, therefore, proceeds to hear the matter.

3. The dispute in question has arisen out of Loan Agreement dated 31.10.2018, *(the Agreement)* under the terms of which, the petitioner had extended a loan to the tune of Rs.25,00,000/- to 'Vin Semiconductors Pvt Ltd', a private limited company, wherein, the respondents were Directors. The respondents are stated to have stood as co-borrowers/guarantor under the Agreement. The said company is stated to be undergoing corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016, and the petitioner seeks to recover its dues from the respondents/co-borrowers by way of arbitration.

4. The petitioner's case is that the respondents did not adhere to

financial discipline, and resultantly, defaulted in the repayment of the loan.

5. Clause 10.1 of the Agreement, which provides for resolution of disputes through arbitration, reads as under:

> *"Any disputes, differences, controversies and questions directly or indirectly arising at any time hereafter between the Parties or their respective representatives or assigns, arising out of or in connection with this Agreement (or the subject matter of the Agreement), including, without limitation any question regarding its existence, validity. interpretation, construction, performance, enforcement, rights and liabilities of the parties. or termination("**Dispute**"), shall be referred to Sole arbitrator duly appointed by the lender. The Language of the arbitration shall be English. The seat of the Arbitration shall be at New Delhi and the language of the proceedings shall be english. The Award shall be in writing and shall set out the reasons {or the Arbitrator's decision. The costs and expenses of the Arbitration shall be borne equally by each Party, with each costs and expenses of the Arbitration shall be borne equally by each party, with each party paying {or its own fees and costs including attorney fees, except as may be determined by the arbitral 15 tribunal. Any award by the Arbitration tribunal shall be final and binding."*

6. The petitioner has issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 *(the Act)* to the respondents on 21.02.2025.

7. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the Act has been fairly well settled. This Court in ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd***[1] has extensively dealt with the scope of interference at the stage of Section 11. In ***Axis Finance Limited Vs. Mr. Agam Ishwar Trimbak***[2]**,** this Court has held that the scope of inquiry under Section 11 of the Act is limited to a *prima facie* examination of the *existence* of an arbitration agreement. Further, it was also reiterated that objections relating to the arbitrability of disputes are not to be entertained by a referral Court acting under Section 8

[1] 2025 SCC OnLine Del 3022
[2] 2025:DHC:7477

or 11 of the Act. The relevant extract of the aforesaid decision reads as under: -

> *19.In In Re: Interplay , the Supreme Court confined the analysis under Section 11 of the Act to the existence of an arbitration agreement and under Section 8 of the Act to the existence and validity of an arbitration agreement. Under both the provisions, examination was to be made at the touchstone of Section 7 of the Act. Further, issues pertaining to the arbitrability of the dispute fell outside the scope of both Section 11(6A) and Section 8 of the Act. The material part of the judgement of the Supreme Court in In Re: Interplay reads as under:*
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> > *164. The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. Where Section 8 requires the referral Court to look into the prima facie existence of a valid arbitration agreement. Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement. Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration Act allows an appeal from the order of an arbitral tribunal refusing to refer the parties to arbitration under Section 8, but not from Section 11. Thus, the 2015 Amendment Act has legislatively overruled the dictum of Patel Engineering (supra) where it was held that Section 8 and Section 11 are complementary in nature. Accordingly, the two provisions cannot be read as laying down a similar standard. 165. The legislature confined the scope of reference under Section 11(6A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In Duro Felguera (supra), this Court held that the referral Courts only need to consider one aspect to determine the existence of an arbitration agreement – whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6A) should be confined to the existence of an arbitration agreement on the basis of Section 7Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the*

requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by arbitral tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia (supra) in the context of Section 8 and Section 11 of the Arbitration Act. 166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competencecompetence, only prima facie proof of the existence of an arbitration agreement must be adduced before the referral Court. The referral Court is not the appropriate forum to conduct a minitrial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the arbitral tribunal. This position of law can also be gauged from the plain language of the statute. 167. Section 11(6A) uses the expression "examination of the existence of an arbitration agreement." The purport of using the word "examination" connotes that the legislature intends that the referral Court has to inspect or scrutinize the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. On the other hand, Section 16 provides that the arbitral tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the referral Court is only required to examine the existence of arbitration agreements, whereas the arbitral tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd." [Emphasis supplied]

20. The effect of In Re: Interplay was further explained by a Three Judge Bench of the Supreme Court in SBI General Insurance Co. Ltd. v. Krish Spinning[3] *wherein the Court declared Vidya Drolia and NTPC Ltd.'s findings qua scope of inquiry under Section 8 and Section 11 of the Act to no longer be compatible with modern principles of arbitration. The material portions of the judgement read as under:*

[3] 2024 SCC OnLine SC 1754

"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). ... 118. Tests like the "eye of the needle" and "ex-facie meritless", although try to minimise the extent of judicial interference, yet they require the referral Court to examine contested facts and appreciate prima facie evidence (however limited the scope of enquiry may be) and thus are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal." [Emphasis supplied]

21. Similarly, in BGM and M-RPL-JMCT (JV) v. Eastern Coalfields Ltd[4] *the Supreme Court succinctly explained the effect of In Re: Interplay on a Referral Court's powers under Section 11 of the Act. The relevant part of the judgement is as under:*

15. ...

(a) Section 11 confines the Court's jurisdiction to the examination regarding the existence of an arbitration agreement.

(b) The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination.

(c) Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Such a legal approach will help the Referral Court in weeding out prima facie non-existent arbitration agreements.

(d) The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. However, the expression "examination"

[4] 2025 SCC OnLine SC 1471

does not connote or imply a laborious or contested inquiry.

(e) The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. Only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal.

(f) Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, when the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award is bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth.

[Emphasis supplied]

22. Thus from the above-mentioned authorities it is clear that a Court's scope of inquiry under Section 11 of the Act has been limited to a prima facie examination of the existence of an arbitration agreement while the adjudication under Section 8 is to be made for both existence and validity. Further, the examination so undertaken under both the said provisions must be within the confines of Section 7 of the Act. Objections relating to arbitrability of disputes are not to be entertained by a referral Court acting under Section 8 or 11 of the Act."

8. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the Agreement, there is no impediment in the appointment of an Arbitrator. Therefore, Mr. Ashish Khatri, Advocate (Mobile No.9910102758, e-mail id: a.khatri1213@yahoo.com) is appointed as the Sole Arbitrator.

9. 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.

10. 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.

11. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.

12. 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 a copy of the instant order be sent to the Sole Arbitrator through electronic mode as well.

13. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 30, 2025/p/amg