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

\+ ARB.P. 1075/2025

Date of Decision: **31.10.2025**

IN THE MATTER OF:

M/S GUPTA TRADERS THROUGH
ITS PROPREITOR .....Petitioner

Through: Ms. Aayushee Priya, Adv.

versus

DELHI TRANSCO LIMITED .....Respondent

Through: Mr. Pankaj Vivek and Mr. Tarun Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the Act), seeking appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties from three purchase orders for dismantling, erection, testing and commissioning of 33 kV, 66kV and 220 kV isolators at various grid station of the respondent.

2. The purchase orders in question are dated 16.07.2018 (for 220 kV isolators) and 30.07.2018 (for 33 kV and 66 kV isolators). By way of a common petition, the petitioner seeks the appointment of an Arbitrator for

the adjudication of disputes arising under all three purchase orders. It is further stated that the petitioner issued a notice invoking arbitration on 09.02.2024.

3. Learned counsel for the respondent has filed a reply raising various objections. Apart from the objections on merits, it is contended that the claims are barred by limitation and that a common petition for all three purchase orders is not maintainable.

4. However, the learned counsel for the respondent does not dispute that all three purchase orders contain an identical and common arbitration clause.

5. I have heard learned counsel appearing for the parties and have perused the record.

6. Clause 8 of the terms and conditions of the purchase orders and Clause 2.18 of the NIT, is extracted as under:

> "*In case of dispute, question or controversy the settlement of which is not specifically provided between DTL and the Supplier/ Contractor relating to this order/ contract or any clause contained or the construction or the portion of the same or the right or duties or liabilities of either party, the matter in dispute shall be referred to the arbitration of CMD (Chairman & Managing Director, DTL or his nominees. His/ Their decision shall be final and binding on both the parties. The provision of Indian Arbitration act, 1996 as amended from time to time shall apply to such arbitration proceedings. Arbitration proceedings shall be held at Delhi and only Delhi Courts will have jurisdiction in the matter. It will not be open to the contractor/ supplier to object to the appointment of CMD, DTL or his nominee as arbitrator on the grounds that he is an officer of the Board or has dealt with the matter in question in the course of his duties or has expressed his views on all or any matter in dispute. Work under this order/contract shall continue notwithstanding the existence of any such dispute/question/controversy during the arbitration proceedings and the payment due or payable by DTL to the contractor shall not be withheld on account of such proceedings unless such payments are the direct subject of such arbitration proceedings."*

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], as well, has extensively dealt with the scope of interference at the stage of Section 11. Furthermore, this Court, recently, in ***Axis Finance Limited Vs. Mr. Agam Ishwar Trimbak***[2] has held that the scope of inquiry under Section 11 of the Act has been limited to a *prima facie* examination of the *existence* of an arbitration agreement. Further, it was also reiterated that the objections relating to the arbitrability of disputes are not to be entertained by a referral Court acting under Section 8 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*

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

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:

"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.

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[3] 2024 SCC OnLine SC 1754
[4] 2025 SCC OnLine SC 1471

(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" 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. With respect to the objection raised by the learned counsel for the respondent regarding the claim being barred by limitation, it is observed that such an objection can be adjudicated by the Arbitrator. Accordingly, the said objection is reserved to be urged and adjudicated before the Arbitrator in accordance with law.

9. As regards the maintainability of a common petition in respect of the three different purchase orders, it is pertinent to note that this Court has had an occasion to consider an analogous issue in ***Extramarks Education India Pvt. Ltd. v. Jay Jalaram Education Trust***[5], wherein reliance was placed upon the decision of the Supreme Court in ***P.R. Shah, Shares & Stock Broker (P) Ltd. v. B.H.H. Securities (P) Ltd***[6].

10. In ***Extramarks***, it was reiterated that where the transactions possess a commonality of purpose, are interlinked, and are governed by a common arbitration clause, a composite reference to arbitration may be permissible.

11. Turning to the facts of the present case, a perusal of the record reveals that the underlying dispute essentially pertains to dismantling, erection, testing, and commissioning of isolators of varying capacities at different grid stations of the respondent, Delhi Transco Limited. The claims emanate from alleged unauthorised deductions, execution of additional work, and consequential loss of profit, thereby demonstrating a common factual *substratum* and interrelation among the three purchase orders.

12. In view of the aforesaid, and having regard to the commonality of

[5] 2025:DHC:4218

parties and the connected nature of disputes, this Court is of the considered opinion that the appointment of a Sole Arbitrator to adjudicate upon all disputes arising from the said purchase orders would be appropriate. However, it is clarified that the petitioner shall be required to file three separate statements of claim corresponding to each purchase order.

13. It shall thereafter be within the discretion of the Arbitrator to determine whether a consolidated award is warranted, or whether separate awards are to be rendered in respect of each claim as may be deemed expedient in the facts and circumstances of the case.

14. Accordingly, Mr. Nikhil Aradhe, Advocate (Mobile - 9406712068 Email - nikhilaradhe@gmail.com) is appointed as the Sole Arbitrator.

15. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12 of the Act.

16. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the Act or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

17. The parties shall share the arbitrator's fee and arbitral cost, equally.

18. 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.

19. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy. Let a copy of the said order be sent to the Sole Arbitrator through electronic mode as well.

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[6] (2012) 1 SCC 594

20. Accordingly, the instant petition stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 31, 2025
aks/mj