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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 04.02.2026

+ ARB.P. 2131/2025

AHLUWALIA (CONTRACTS) INDIA LIMITED

.....Petitioner

Through: Dr. Amit George, Mr. Shashwat Kabi and Mr. Vaibhav Gandhi, Advocates

versus

AIIMS THROUGH SUPERINTENDING ENGINEER & ANR.

.....Respondents

Through: Mr. Debarshi Bhadra, Advocates for R-1 & 2
Mr. Kunal Sabharwal, Advocate for AIIMS

CORAM:

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

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JUDGEMENT (ORAL)

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 [“**the Act**”], seeking the appointment of Sole Arbitrator to adjudicate the disputes between the parties arising out of the Contract dated 29.05.2015 [“**Agreement**”].
2. The said Agreement contains an Arbitration Clause, being Clause 67 of the General Conditions of Contract [“**GCC**”], which reads as under:

“67.3 Arbitration

67.3.1 Any dispute and differences relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used in the work or as to any other question, claim, right, matter or thing



whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof in respect of which :-

- a) The decision, if any, the Engineer has not become final and binding pursuant to Sub Clause 67.1 and
- b) Conciliation has not been reached as per the provisions of Clause 67.2

Shall be referred to the Sole Arbitration of a person appointed by the Chairman and Managing Director (CMD) of HSCC (I) Ltd. from the panel of Arbitrators approved by All India Institute of Medical Sciences, Ansari Nagar, New Delhi. Such Arbitrator shall be appointed within 30 days of the receipt of letter of invocation of Arbitration duly satisfying the requirements of this clause.

67.3.2. If the Arbitrator so appointed resigns his appointment, is unable or unwilling to act due to any reason whatsoever, or dies, the Chairman and Managing Director aforesaid or in his absence the person discharging the duties of CMD of HSCC (I) Ltd. may appoint a new Arbitrator in accordance with these terms and conditions of the contract, to act in his place and the new Arbitrator so appointed may proceed from the stage at which it was left by his predecessor.

67.3.3. It is a term of the contract that the party invoking the Arbitration shall specify/ the dispute/differences or questions to be referred to the arbitrator under this clause together with the amounts claimed in respect of each dispute.

67.3.4 The Arbitrator may proceed with the Arbitration ex-parte, if either party, in spite of a notice from the Arbitrator, fails to take part in the proceedings.

67.3.5 The work under the contract shall continue, if required, during the Arbitration proceedings.

67.3.6 The Arbitrator shall make speaking Award and give reasons for his decision in respect of each dispute/claim alongwith the sums awarded separately on each individual item of dispute or difference



or claims. The Arbitrator shall make separate award on each reference made to him.

67.3.7 The award of the Arbitrator shall be final, conclusive and binding on both the parties.

67.3.8 Subject to the aforesaid, the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modifications or re-enactment thereof and the Rules made thereunder and for the time being in force shall apply to the Arbitration proceedings and Arbitrator shall publish his Award accordingly.”

3. The material on record indicates that the Petitioner herein invoked arbitration in terms of Section 21 of the Act *vide* legal notice dated 04.06.2025.

4. This Court is mindful of the limited scope of judicial interference at the stage of consideration of a petition under Section 11 of the Act. The law governing the scope and standard of judicial scrutiny under Section 11(6) of the Act is now fairly well settled. A Coordinate Bench of this Court, of late, in ***Pradhaan Air Express Pvt. Ltd. v. Air Works India Engineering Pvt. Ltd.***¹, has elaborately examined the contours of jurisdiction exercisable at the stage of appointment of an arbitrator. After comprehensively analysing the relevant precedents of the Hon’ble Supreme Court, the Coordinate Bench succinctly discussed and summarised the legal position, which reads 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 &***

¹ 2025 SCC OnLine Del 3022



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

(emphasis supplied)

5. Learned counsel for the Petitioner submits that the dispute be referred to arbitration, to which learned counsel appearing for Respondent Nos. 1 and 2 raise no objection.
6. The learned counsel for the parties are also *ad idem* that since the dispute is stated to be for an amount of approximately Rs. 62 crores, the matter be referred to an Arbitrator under the *aegis* of the Delhi International Arbitration Centre [“DIAC”].
7. Accordingly, **Justice (Retd.) Rajiv Shakdher (Mobile No. [REDACTED])**, is appointed as the sole Arbitrator.
8. The arbitration would take place under the *aegis* of the DIAC and would abide by its rules and regulations.
9. The learned sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12(2) of the Act within a week of entering of reference.
10. The learned sole Arbitrator shall be entitled to fees in accordance with the Fourth Schedule of the Act or as may otherwise be agreed to between the parties and the learned sole Arbitrator.
11. The parties shall share the learned sole Arbitrator’s fee and arbitral costs equally.
12. All rights and contentions of the parties are kept open, to be decided by the learned sole Arbitrator on their merits, in accordance



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with law.

13. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy. All rights and contentions of the parties in this regard are reserved.

14. The Registry is directed to send a receipt of this order to the learned Arbitrator through all permissible modes, including through e-mail.

15. Accordingly, the present Petition, along with pending application(s), is disposed of in the aforesaid terms.

16. No Order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.
FEBRUARY 4, 2026/rk/kr