$~37 & 30

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

Date of decision: 06.02.2026

\+ ARB.P. 248/2026, I.A. 3382/2026 (Ex.) & I.A. 3383/2026 (Delay of 25 days in Re-filing the petition)

RAKESH MAHAJAN & ANR. .....Petitioners

Through: Mr. Gagan Gupta, Senior Advocate with Mr. Hanit Sachdeva, Advocate.

versus

IFTIKHAR AHMED & ORS. .....Respondents

Through: Mr. Arkaj Kumar and Mr. Karsh Rebelo, Advocates for R-1 to R-3.

30

\+

O.M.P.(I) 18/2025 & I.A. 26412/2025 (Delay of 15 days in Re-filing the petition)

RAKESH MAHAJAN & ANR. .....Petitioners

Through: Mr. Gagan Gupta, Senior Advocate with Mr. Hanit Sachdeva, Advocate.

versus

IFTIKHAR AHMED & ORS. .....Respondents

Through: Mr. Arkaj Kumar and Mr. Karsh Rebelo,

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGMENT (ORAL)**

HARISH VAIDYANATHAN SHANKAR, J.

ARB.P. 248/2026, I.A. 3382/2026 (Ex.) & I.A. 3383/2026 (Delay of 25 days in Re-filing the petition)

1. The present Petition, under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 ["**Act**"], has been filed seeking the appointment of a sole Arbitrator for the adjudication of disputes *inter se* the parties arising out of the Memorandum of Understanding dated 16.03.2023 ["**MoU**"].

2. Clause 5.9 of the MoU, which contains the arbitration clause, reads as follows:

> "**5.9 Dispute Resolution**
> Any Dispute shall be referred to Sole Arbitrator, as mutually agreed upon by Rakesh Mahajan and Iftikhar Ahmed as per the provisions of the Arbitration and Conciliation Act, 2019 as amended till date. The venue and seat of the arbitration shall be New Delhi. The language of the arbitration shall be English."

3. The material on record indicates that, pursuant to the disputes that arose between the parties, the notice under Section 21 of the Act dated 06.03.2025 was issued by the Petitioner. A reply was issued by the Respondents to the said Section 21 Notice on 27.03.2025, by way of which the Respondents refused to give their consent for invoking arbitration and denied the existence of any disputes between the parties.

4. Hence, the Petitioner has approached this Court by way of the present Petition seeking the appointment of a sole Arbitrator.

5. Mr. Arkaj Kumar, Advocate who appears on advance notice on behalf of the Respondents No. 1 to 3, submits that he has no objection if the matter is referred to Arbitration.

6. 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 in ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd [2025 SCC OnLine Del 3022]*** 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.* 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 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*[6].”

7. Learned counsel for the Petitioner and Respondents No. 1 to 3 are *ad idem* that the matter may be referred to arbitration by way of appointment of a sole Arbitrator by this Court.

8. At this stage, this Court takes note of the submission of the learned Senior Counsel for the Petitioner that Respondent No. 4 has not entered appearance. It is made clear that this Court is referring the parties who have expressed their consensus alone. The learned Arbitrator is at liberty to pass such orders as deemed fit in respect of any party that may be sought to be added to the proceedings.

9. The material on record further indicates that the disputed amount is stated to be approximately Rs. 9 crores.

10. In view of the fact that disputes have arisen between the parties and there is an Arbitration clause in the agreement, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

11. Accordingly, this Court requests **Hon’ble Mr. Justice Manmohan Singh (Retd.) (Mobile No. [redacted] & e-mail id: [redacted])**, to enter into the reference as an Arbitrator to adjudicate the disputes *inter se* the parties.

12. 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.

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

14. The parties shall share the learned sole Arbitrator's fee and arbitral cost, equally.

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

16. 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.

17. 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.

18. Accordingly, the present Petition, along with pending Application(s), if any, stand disposed of in the aforesaid terms.

O.M.P.(I) 18/2025 & I.A. 26412/2025 (Delay of 15 days in Re-filing the petition)

19. The present Petition has been filed under Section 9 of the Act, seeking the following reliefs:

> "…..
>
> i. Secure the amount of Rs. 6,80,96,119/- (Six Crores Eighty Lakhs Ninety Six Thousand One Hundred And Nineteen Only) along with 12 percent pendent lite interest, by way of fixed deposit or bank guarantee or any form as the hon'ble Court may deem fit and proper, and
>
> ii. Direct any other interim relief as deemed necessary by this Hon'ble Court in the interests of justice and to prevent irreparable injury to the petitioner; and

iii. Pass such further order(s) as this Hon'ble Court may deem fit and proper under the facts of the case."

20. Considering the fact that a learned Arbitrator has been appointed by this Court, in terms of the preceding paragraphs, this petition under section 9 may be treated as an application under Section 17 of the Act, and appropriate directions be passed by the learned Arbitrator after entering upon the reference.

21. All rights and contentions of the parties, including those relating to claims and counter-claims, are kept open and shall be adjudicated by the learned Arbitrator on their merits, in accordance with law. Needless to say, nothing contained in this order shall be construed as an expression of opinion by this Court on the merits of the disputes between the parties.

22. Accordingly, the present Petition, along with all pending Application(s), if any, is disposed of.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 06, 2026/tk/va/dj