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

Date of Decision: 13.02.2026

+ **ARB.P. 79/2026**

TATA CAPITAL LIMITEDPetitioner
Through: Mr. Nachiketa Suri, Mr. Rajkumar Dahiya, Mr. Kashish Aggarwal, Ms. Shubhangi Singh and Mr. Bharat, Advocates.

versus

DEVENDER AND ANRRespondents
Through: Mr. Shubham Rana and Mr. Varun Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (ORAL)**

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been filed under Section 11(6) of **the Arbitration and Conciliation Act, 1996¹**, seeking the appointment of an Arbitrator to adjudicate upon the disputes *inter se* the parties arising out of the **Loan Agreement dated 30.05.2025²**.

2. The Arbitration Clause, being Clause 12 of the Agreement, reads as follows:

“12. Arbitration

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the

¹ Act

² Agreement



2026:DHC:1292



interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitrator to be appointed by any of the following institutions:

(a) The Council for National and international Commercial Arbitration having its office at Unit No.208, 2nd Floor, Beta Wing, Raheja Towers, Nos. 113-134, Anna Salai, Chennai-600002

(b) Centre for Online Resolution of Disputes having its office at F-14, 3rd Cross, Manyata Residency, Manyata Tech Park, Bengaluru - 560045

(c) The Centre for Alternative Dispute Resolution Excellence having its office at 107C, Mulberry Woods, Janatha Colony, Carmeleram station Road, Doddakanneli, Bengaluru-560035.

(d) ADR E-Sarvatra Private Limited having Its office at 63, Palace Road, Vasanth Nagar, Bengaluru- 560052;

(e) Madras Alternate Dispute Resolution Centre (MADRC), having Its office at C-40,2nd Floor, 2nd Avenue, Anna Nagar West, Chennai-600040;

(f) Lex Carta Private Limited (Just Act), having its office at T4,7th Street, Dr VSI Estate Phase 2 Thiruvanniyur, Chennai,- 600 041.

(g) The Madras Chamber of Commerce & Industry (MCCI), having Its office at 'Karumuttu Center' 1st Floor, 634, Anna Salal, Chennai 600 035.

(h) Any arbitral institution designated under the provisions of the Arbitration or Conciliation Act, 1996 ("the Act") or any panel of arbitrators maintained under the provisions of that Act;

hereinafter referred to as ("Institution") in accordance with the rules of the Institution as prevailing and as amended from time to time.

The arbitration proceedings shall be based on documents only which shall be conducted through exchange of e-mail and/or any other mode of electronic communication as permitted by the rules of the Institution or through an online dispute resolution by the web portal offered by the Institution. The parties hereby agree that the arbitral proceeding shall be conducted In electronic mode and all pleadings and documents will be exchanged electronically. There shall be no in-person and/or oral hearings except in certain exceptional circumstances as the sole arbitrator may deem fit upon the request of either of the parties. In such Instances, the hearings shall be conducted virtually at the sole discretion of the arbitrator. The seat of arbitration for all purposes shall be deemed to be such place as mentioned in Annexure I of the Agreement. The language



of arbitral proceedings shall be English.

In the event the arbitrator to whom the matter is originally referred, resigns or dies or Is unable to act for any reason, the Institution shall appoint another person In his/her place to act as arbitrator who shall proceed with the reference from the stage at which It was left by his/her predecessor.

The arbitrator so appointed shall have the power to pass an award and also to pass Interim orders/directions as may be appropriate to protect the Interest of the parties pending resolution of the dispute. A certified copy of the award passed by the arbitrator, a digitally signed copy of the same or a scan copy of the same shall be sent to the parties through e-mall or any other electronic mode including the web portal as the institution deems fit which shall be considered as a signed copy.

All notices, processes and communications between the parties with respect to the arbitration proceedings shall be through e-mail or any other mode of communication permitted by the institution notwithstanding the notice clause contained in the Agreement which shall continue to apply to all other communications between the parties. It shall be the responsibility of the Lender and Obligor(s) to save the emails in the address book. The delivery of emails to spam, promotion, etc. shall also be a deemed delivery.

The courts at such place as mentioned in Annexure 1 of the Agreement shall have exclusive jurisdiction in respect of matters arising hereunder including any petition for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996/ application for setting aside the award/ appeal and the Lender/ Obligor(s) shall not object to such jurisdiction. The arbitration shall be conducted under the provisions of Arbitration and Conciliation act, 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The award of the arbitrator shall be final and binding on all parties concerned. The cost of arbitration shall be borne by the Borrower.”

3. Learned counsel for the Petitioner submits that the said Arbitration Clause would have to be read with Serial Nos. 14 and 15 of Annexure-1 appended to the Agreement, which specifies Delhi as the place of arbitration and courts at Delhi having the jurisdiction over the subject matter of the dispute.

4. Material on record indicates that the Notice invoking arbitration in terms of Section 21 of the Act was issued by the Petitioner *vide*



Notice dated 09.09.2025; however, no reply was forthcoming.

5. This Court is cognizant of the scope of interference at the stage of a Section 11(6) Petition. 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***³ 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 *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

³ 2025 SCC OnLine Del 3022



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.”

6. Material on record further indicates that the valuation of the present disputes is approximately Rs. 20,00,000/-.

7. Learned counsel for the Respondents submits that he has no objection to the matter being referred to arbitration by a sole Arbitrator appointed by this Court.

8. Both parties are also desirous that the Arbitration be carried out under the *aegis* of the Delhi International Arbitration Centre [“DIAC”].

9. 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.

10. Accordingly, **Mr. Aman Raj Gandhi, Advocate (Mobile No. 9810370799)**, who is empanelled with the DIAC, 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 of 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. 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.

16. Accordingly, the present Petition, along with pending application(s), if any, stands disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J.
FEBRUARY 13, 2026/nd/va/sg