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

Date of decision: 21.01.2026

\+ O.M.P.(I) (COMM.) 413/2025 & I.A. 24897/2025 (Seeking exemption from filing clear copies of dim documents)

ORIENTAL FOUNDRY PRIVATE LIMITED .....Petitioner

Through: Mr. R. Sudhinder, Mr. Ashish Mukhi, Mr. Sanidhya Sonthalia & Mr. Kanishk Pandey, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Shashank Dixit, CGSC with Mr. Kunal Raj, Adv.

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\+ ARB.P. 150/2026 & I.A. 1707/2026 (Ex. From filing clear copies of dim documents)

ORIENTAL FOUNDRY PRIVATE LIMITED .....Petitioner

Through: Mr. R. Sudhinder, Mr. Ashish Mukhi, Mr. Sanidhya Sonthalia & Mr. Kanishk Pandey, Advs.

versus

UNION OF INDIA

.....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (ORAL)**

HARISH VAIDYANATHAN SHANKAR, J.

ARB.P. 150/2026

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, ["**the Act**"] seeks appointment of an arbitrator in terms of the arbitration clause, being clause 18 under a Contract No. 2022/RS(I)/954/151/1884, dated 10.02.2022, for manufacture and supply of wagons. Clause 18 of the Contract reads as under:

> "18.0 Settlement of Disputes (Arbitration): The contract will be governed by the arbitration clause with amendments as specified in the Railway Board's letter No. 2018/TF/Civil/Arbitration Policy dated 12.12.2018"

2. The material on record indicates that, pursuant to disputes having arisen between the parties, the Petitioner invoked the arbitration clause by issuing a Notice under Section 21 of the Act dated 01.10.2025, wherein the Petitioner also proposed the name of Hon'ble Mr. Justice (Retd.) R.C. Chopra, Former Judge of this Court, for appointment as the sole arbitrator.

3. *Vide* reply dated 18.11.2025, the Respondent acknowledged that the Petitioner had not waived the applicability of Section 12(5) of the Act, and furnished a panel of four retired Railway Officers for the appointment of the nominee arbitrator.

4. In view of the Respondent having furnished a PSU-curated panel for appointment of the nominee arbitrator, which is stated by the Petitioner to be contrary to the principle of equal treatment of parties, the parties have approached this Court seeking appointment of an

Arbitrator.

5. 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 as well in the order dated 24.04.2025 in case of ARB.P. 145/2025 titled as ***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. 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*, 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* 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.
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> **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-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:—
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> > *"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*

[1] 2025 SCC OnLine Del 3022

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)

6. In view of the fact that disputes have arisen *inter se* the parties and there being an arbitration clause stipulated under the Agreement, there is no impediment in appointing the sole Arbitrator.

7. Having regard to the fact that the value of the claims, as stated by the parties, is approximately ₹60/- Crores, the disputes between the parties are referred to arbitration.

8. Accordingly, **Hon'ble Mr./Ms. Justice (Retd.) S. Ravindra Bhat (Mob. No. +91-9818000160)**, who is empanelled with the Delhi International Arbitration Centre ["**DIAC**"], is appointed as the sole Arbitrator.

9. The arbitration would take place under the aegis of the DIAC and would abide by its rules and regulations.

10. 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.

11. 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.

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

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

14. 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. Let the copy of the said order be sent to the learned sole Arbitrator through the electronic mode as well.

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

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16. The present petition has been filed under Section 9 of the Act seeking interim reliefs, *inter alia*, in the nature of directing Respondent No. 1 to maintain *status quo* and not take any coercive and precipitative action pursuant to Respondent No. 1's letter for Amendment VII dated 26.09.2025 till the time an arbitral tribunal is constituted and the Petitioner is able to approach the same under

Section 17 of the Act.

17. Accordingly, this petition filed under Section 9 of the Act will be treated as application under Section 17 of the Act, which now shall be considered by the learned Arbitrator, after entering reference, in accordance with law.

18. Needless to say, till the time Section 17 Application is considered by the learned Arbitrator, the interim order granted by this Court shall continue.

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

20. A photocopy of this Order passed today be kept in the connected matter.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 21, 2026/ν/kr