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

% ***Judgment reserved on: 12.01.2026***
Judgment pronounced on:22.01.2026

\+ ARB.P. 2001/2024

PRATEEK GOEL .....Petitioner

Through: Mr. Sanyam Jain, Advocate.

versus

DHAKKSHINAMOORTHY NATARAJAN .....Respondent

Through: Ms. Upasna Bakshi, Mr. Satish Kumar and Ms. Divya Bakshi, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present petition has been instituted under Section 11(6) of the **Arbitration and Conciliation Act, 1996**[1], whereby the Petitioner seeks the appointment of an independent Sole Arbitrator for the adjudication of disputes stated to have arisen between the parties in relation to the **Memorandum of Understanding dated 24.11.2020**[2].

2. It is the case of the Petitioner that a notice invoking arbitration under Section 21 of the Act was duly issued on 11.03.2024; however, despite receipt thereof, the Respondent failed to act in accordance with the agreed procedure for appointment of an arbitrator, thereby

[1] Act
[2] MoU

necessitating the present petition before this Court.

3. Briefly stated, the Petitioner asserts that a sum of Rs. 25,00,000/- was advanced to the Respondent on 05.10.2020 for safe custody. It is the Petitioner's case that the Respondent, without consent, utilised the said amount for his personal purposes.

4. It is averred by the Petitioner that thereafter, on 24.11.2020, the parties entered into a MoU at New Delhi, whereby the Respondent acknowledged the utilisation of the amount and undertook to repay the same on or before 01.02.2021. Along with the MoU, the Respondent also executed a Promissory Note and an Acknowledgment Receipt of the same date, and issued five cheques of Rs. 5,00,000/- each.

5. According to the Petitioner, despite repeated demands, the amount was not repaid and the cheques, when presented, were dishonoured for insufficiency of funds. This led to the initiation of proceedings under Section 138 of the Negotiable Instruments Act, 1881, which are stated to be pending.

6. It is averred by the Petitioner that the MoU contains an arbitration clause (Clause 12) providing that disputes arising out of the transaction between the parties shall be resolved by arbitration, with the seat of arbitration being New Delhi.

7. Invoking the said clause, the Petitioner issued a notice under Section 21 of the Act dated 06.03.2024, dispatched on 11.03.2024. The Respondent replied *vide* notice dated 28.03.2024, disputing the claims and declining reference to arbitration.

CONTENTIONS ON BEHALF OF THE PETITIONER:

8. Learned counsel appearing on behalf of the Petitioner would contend that the MoU dated 24.11.2020 contains a valid and binding

arbitration agreement governing the disputes between the parties. It would be submitted that disputes have admittedly arisen in relation to the said MoU and the underlying transaction, thereby giving rise to a cause for the invocation of arbitration.

9. Learned counsel would further submit that the arbitration clause was duly invoked by issuance of a notice under Section 21 of the Act; however, despite receipt of the said notice, the Respondent failed and neglected to act in accordance with the procedure agreed between the parties for the appointment of an arbitrator.

10. It is further contended that in view of the settled position of law, the clause providing for unilateral appointment of the sole arbitrator by one party is no longer enforceable, and consequently, the Petitioner was left with no alternative but to approach this Court under Section 11(6) of the Act for appointment of an independent and impartial Sole Arbitrator.

CONTENTIONS ON BEHALF OF THE RESPONDENT:

11. Learned counsel appearing on behalf of the Respondent would contend that the present petition is not maintainable and that the disputes sought to be referred to arbitration do not warrant the appointment of an arbitrator by this Court. It would further be submitted that the MoU was not executed with free consent and is alleged to have been obtained under coercion and threat. Learned counsel would contend that the Respondent has lodged a complaint in this regard with the concerned police authorities, alleging that the MoU was forcibly executed, and therefore, the said agreement, including the arbitration clause contained therein, is not legally binding upon the Respondent.

12. Learned counsel for the Respondent would further contend that the alleged transaction was a cash transaction and, therefore, no proceedings can be invoked for the purpose of enforcing the same. It would be submitted that there exists no valid or enforceable agreement between the parties, and that this is further borne out from the fact that the entire conspectus of facts relating to the alleged agreement is stated to have transpired during the period affected by the COVID-19 pandemic.

13. Learned counsel for the Respondent would further contend that the cheques in question were neither voluntarily issued nor issued in discharge of any legally enforceable debt or liability, and that the criminal proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881, are false and malicious.

14. It would be further contended by the learned Counsel for the Respondent that this Court lacks territorial jurisdiction to entertain the present petition. In support thereof, learned counsel for the Respondent would submit that, as is evident from the contents of the agreement itself, the performance thereof was required to take place at Chennai, and consequently, the courts at Delhi would have no jurisdiction to entertain the present proceedings.

ANALYSIS:

15. This Court has heard learned counsel for the parties at length and has carefully examined the pleadings as well as the documents placed on record.

16. 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***.[3], 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 & 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*

[3] 2025 SCC OnLine Del 3022

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)

17. At the outset, this court deems it appropriate to extract the Arbitration Clause as envisaged under the MoU, which reads as follows:

"**12.** That in case any dispute arose between the Parties, in relation to the present MOA or the present transaction of Rs. 25,00,000/- (Rs. Twenty Five Lakhs Only), the dispute shall be resolved by way of an Arbitration to be conducted by a sole Arbitrator appointed solely by the First Party. The Sole Arbitrator shall conduct the Arbitration as per the norms laid down in The Arbitration and Conciliation Act, 1996 (as amended upto date). The seat of the Arbitrator shall be in New Delhi.
13. That the Courts at New Delhi shall have the Jurisdiction to

adjudicate the matter."

(emphasis added)

18. Learned counsel for the Respondent has contended that this Court lacks territorial jurisdiction to entertain the present petition, on the premise that the performance of the MoU was to take place outside Delhi. However, a bare perusal of the MoU leaves no manner of doubt that the said objection is wholly misconceived. Clause 12 of the MoU expressly stipulates that the seat of arbitration shall be New Delhi, and Clause 13 further confers jurisdiction upon the courts at New Delhi to adjudicate disputes arising therefrom. It is a settled principle of law that once the seat of arbitration is designated, the courts exercising jurisdiction over the seat alone retain supervisory jurisdiction over the arbitral proceedings. In view thereof, this Court finds no merit in the objection raised on behalf of the Respondent, and the same is accordingly rejected.

19. With respect to the contention as to whether the agreement itself came to be entered into under coercion or whether the same is a fabricated document, this Court is of the view that such issues are essentially questions of fact, which the learned Arbitrator is competent to examine and adjudicate upon.

20. It is well settled that the remit of a Court exercising jurisdiction under Section 11 of the Act is extremely circumscribed and confined to a *prima facie* examination of the existence of an arbitration agreement. Undoubtedly, on a *prima facie* basis, an arbitration clause exists in the agreement between the parties, and any contention relating to the validity of the agreement or touching upon the merits of the disputes would fall squarely within the domain of the learned

Arbitrator to be decided in accordance with law.

21. This Court is mindful of the fact that the Respondent has sought to contend that the MoU was executed under coercion and that a complaint in this regard has been lodged. However, a perusal of the record reveals that no such complaint has been placed before this Court. Save and except a bald assertion made in the reply notice, there is no contemporaneous material or documentary evidence on record to substantiate the allegation of coercion. Nonetheless, these issues can be raised before the learned Arbitrator.

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

23. As stated in the Petition, the disputed amount comes up to Rs. 25,00,0000/-.

24. Accordingly, ***Mr. Kanwaljeet Arora (Mob. No.+919910384733***), who is empanelled with the Delhi International Arbitration Centre (DIAC), is appointed as the sole Arbitrator.

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

26. 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.

27. 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.

28. The parties shall share the learned sole Arbitrator's fee and arbitral costs equally.

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

30. 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.

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

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

33. No Order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 22, 2026/tk/kr