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

Date of decision: 23.01.2026

\+ ARB.P. 1918/2025

MS. SUMITA BANU .....Petitioner

Through: Mr. N U Ahmed & Mr. Anil Kumar Yadav, Advs.

versus

SMT LALITA RATHI .....Respondent

Through: Dr. Anurag Bhardwaj, Mr. Prabhu Saxena & Ms. Devyani, Advs.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **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 an Arbitrator to adjudicate the disputes between the parties arising out of the Service Agreement dated 11.03.2025 ["**Agreement**"].

2. The said Agreement contains an Arbitration Clause, being Clause 6, which reads as under:

> **"6. Dispute Resolution:**
> In the event of any dispute under this Agreement, the same shall be amicably settled between the Parties. If any dispute is not settled amicably, the same shall be referred to the sole arbitrator to be appointed mutually by both the Parties. The award given by the Arbitrator shall be final and binding on both the Parties. The language of Arbitral Proceedings shall be English. This arbitration

shall be governed by The Arbitration & Conciliation Act, I 996 and the place of arbitration shall be at Delhi."

3. The material on record indicates that the Petitioner herein invoked arbitration in terms of Section 21 of the Act *vide* legal notice dated 01.09.2025.

4. This Court is cognizant of the scope of interference at the stage of a Petition under Section 11 of the Act. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the Act has been fairly well settled. A Coordinate bench of 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,*** *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 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 SCC OnLine SC 1754 : 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.*
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> ***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"**.*

5. Learned counsel appearing for the parties are *ad idem* that the matter may be referred to arbitration. The learned counsel for the parties are also *ad idem* that since the dispute is stated to be for an

amount of Rs. 9,73,084/-, the matter be referred to an Advocate under the *aegis* of the Delhi International Arbitration Centre ["**DIAC**"].

6. Accordingly, this Court appoints **Mr. Saurabh Seth, Advocate (Mobile No.9811393402),** who is empanelled with the DIAC, to adjudicate the disputes as between the parties.

7. The arbitration would take place under the aegis of the 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.

8. 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.

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

10. 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.

11. 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.

12. Accordingly, the present petition, along with all pending application(s), if any, is disposed of.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 23, 2026/ ν/her/jk