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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28.01.2026

+ ARB.P. 397/2025

RAMAN KUMAR .....Petitioner  
Through: Mr. A. Mishra, Mr. Sahil and  
Mr. Nidish, Advocates.

versus

MS SKYTEX UNMANNED AREIAL SOLUTION PRIVATE  
LIMITED .....Respondent

Through: Mr. Chinmaya Seth, Mr. A.K.  
Seth and Ms. Palak Mathur,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR**

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**JUDGEMENT (Oral)**

1. The present Petition, under Section 11(6) of the **Arbitration and Conciliation Act, 1996**<sup>1</sup>, has been filed seeking the appointment of an Arbitrator for the adjudication of disputes *inter se* the parties arising out of the **Memorandum of Understanding** dated **20.12.2022**<sup>2</sup>.

2. The MoU contains the Arbitration Clause at Clauses 11 and 12, which read as under:

***“11. Dispute Resolution***

*Any disputes or differences involving this MOU whenever arising shall be resolved mutually by the both parties within 30 days of receipt of the written notice that regard from the aggrieved party. Failing amicable settlement, the matter shall be resolved through an arbitration tribunal comprising of sole arbitrator appointed by*

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<sup>1</sup> Act

<sup>2</sup> MoU



*mutual consent by the parties hereto and in the event of the parties fail to mutually appoint an arbitrator, he shall be appointed by Court of competent jurisdiction. The award of the Arbitrator shall be final and binding on the parties.*

#### **12. Law/Jurisdiction**

*The engagement shall be subject to Indian laws. The Parties to this MOU submit to the exclusive jurisdiction of the courts in New Delhi for settling any dispute arising out of the engagement hereunder”*

3. Material on record indicates that since disputes had arisen between the parties, the Petitioner herein invoked the Arbitration Clause in terms of the provisions of Section 21 of the Act *vide* Legal Notice dated 02.12.2024.

4. Learned counsel appearing on behalf of the Respondent raised a preliminary objection to the appointment of an Arbitrator on the ground that the original copy of the said MoU has not been produced. However, learned counsel for the Petitioner has handed over across the Bar the original MoU, and accordingly, this objection is rendered infructuous and therefore does not survive.

5. Learned counsel for the Respondent further raises an objection that the parties never actually entered into an Agreement. This Court is of the opinion that all such objections can be raised and are well within the jurisdiction of the learned Arbitrator.

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. The Hon’ble Supreme Court in ***SBI General Insurance Co. Ltd. vs. M/s Krish Spinning***<sup>3</sup> has extensively dealt with the scope of interference at the stage of Section 11 of the Act. The relevant extract of ***Krish Spinning (supra)*** reads as under:-

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<sup>3</sup> 2024 SCC OnLine SC 1754



“113. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

114. The use of the term “examination” under Section 11(6-A) as distinguished from the use of the term “rule” under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a *prima facie* scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to “rule” under Section 16. The *prima facie* view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award.

115. The aforesaid approach serves a twofold purpose — firstly, it allows the Referral Court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the Arbitral Tribunal to rule on the issue of existence of the arbitration agreement in depth.

116. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066]* that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a *prima facie* arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow: (SCC p. 104, para 220)

*“220. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a *prima facie* arbitration agreement and [Ed.: The words between two asterisks have been emphasised in original as well.] not other issues [Ed.: The words between two asterisks have been emphasised in original as well.]”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the Referral Court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a time-bound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound*



appointment of arbitrators.”

**117.** In view of the observations made by this Court in *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066]* , 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* [*Vidya Drolia v. Durga Trading Corp., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549*] and adopted in *NTPC Ltd. v. SPML Infra Ltd. [NTPC Ltd. v. SPML Infra Ltd., (2023) 9 SCC 385 : (2023) 4 SCC (Civ) 342]*] 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 *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re[Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066]* .”

*(emphasis supplied)*

7. In view of the settled law and the fact that disputes have arisen between the parties and an arbitration clause *prima facie* exists in the MoU, this Court deems it appropriate to appoint an Arbitrator to adjudicate upon the disputes between the parties.

8. Material on record further indicates that the disputed amount is stated to be Rs. 4,00,00,000/- (Rupees Four Crores Only) approximately.

9. Accordingly, this Court requests **Mr. Ganesan Umapathy, learned Senior Advocate (e-mail : [gumapathy57@gmail.com](mailto:gumapathy57@gmail.com) & Mobile No. 9810030885)** who is empanelled with the DIAC, to enter into the reference as the learned Arbitrator to adjudicate the disputes *inter se* the parties.

10. The arbitration would take place under the *aegis* of the Delhi International Arbitration Centre (DIAC) and would abide by its rules



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and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

11. The learned Arbitrator is also requested to file the requisite disclosure under Section 12 (2) of the Act within a week of entering the reference.

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

13. 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.

14. 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.

15. Accordingly, the present petition stands disposed of.

**HARISH VAIDYANATHAN SHANKAR, J**

**JANUARY 28, 2026/nd/va/dj**