$~1(Original Side)

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

Date of Decision: 16.01.2026

\+ ARB.P. 1253/2025 & I.A. 20190/2025

M/S KALRA RADIOS ....Petitioner

Through: Mr. Braj Bhushan Lal Karn, Adv.

versus

S. BALJEET SINGH .....Respondent

Through: Mr. Mayan Prasad, Mr. Rituraj Biswas, Mr. Murari Kumar Singh, Mr. Aayush Garg, Ms. Kanak Kumari, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (*ORAL*)

1. The judgment is de-reserved.
2. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 ("***1996 Act***") seeking appointment of an Arbitrator for adjudication of disputes between the parties.
3. The brief facts of the case are that Mr. Dharam Pal Kalra was allotted property measuring 600 square yards in plot No. 207, Block-C, Naraina Industrial Area, Phase-I, Delhi *vide* perpetual lease deed dated 15.07.1967 registered as document No.13017 in additional book No.1 volume 86 on pages 102 to 107 dated 29.10.1967.
4. Mr. Dharam Pal Kalra sold 75 square yards on the ground floor, backside portion size 45'x15' and first floor shed known as Room No. A over ground floor portion of the said property by the registered Agreement to Sell dated 09.06.2003 which was duly registered and

signed between the parties.

5. The said Agreement to Sell was on the basis of clause 7 of the perpetual lease deed which permitted the lessee to sub-lease the property.

6. Mr. Dharam Pal Kalra expired on 11.03.2017 and the petitioner being his son got survivorship member certificate from the Sub Divisional Magistrate.

7. The said Agreement to Sell contained an arbitration clause being Clause No. 16, which reads as under:

> *"16. That the First Party has given photo copies of all related documents about ownership of the property. Also, if; any dispute arises between the parties, the same shall be got decided by a mutually appointed Arbitrator"*

8. Since there were disputes between the parties, the petitioner invoked Arbitration *vide* legal notice dated 14.08.2024 and thereafter has filed the present petition.

9. The reason stated for the termination of the Agreement is that the respondent was in possession of the said property and was using the same in the capacity of a licensee but now the respondent is trying to dispose of the said property without any legal authority. Hence, the petitioner in the capacity of the principal lessor has terminated the license Agreement and is seeking possession.

10. Mr. Prasad, learned counsel for the respondent, states that there exists no valid or binding arbitration agreement between the parties. It is contended that the arbitration clause cannot be inferred from Clause No. 16, which merely contemplates arbitration in the event of disputes,

inasmuch as Clause No. 15 simultaneously confers discretion upon the parties to seek enforcement of the Agreement before a Court of law. Clause No. 15 reads as under:

> "*15. That if the First Party infringes the terms and conditions of this Agreement, the Second Party shall he entitled to get implementation of this Agreement through the Court of Law and the First Party shall co-operate in all requirements wherever required or where his presence is required."*

11. Accordingly, the coexistence of these two clauses creates an inherent inconsistency, thereby negating any unequivocal intention of the parties to submit disputes exclusively to arbitration. Consequently, it is urged that in the absence of a clear and mandatory arbitration agreement, the present reference is not maintainable. He relies on *BGM & M-RPL-JMCT (JV) v. Eastern Coalfields Ltd., 2025 SCC OnLine SC 1471*. He further places reliance on *Tata Capital Housing Finance Ltd. v. Shri Chand Construction and Apartment (P) Ltd., 2021 SCC OnLine Del 5091*.

12. The scope of inquiry by the referral court under Section 11 of the 1996 Act is very limited. The Court is only required to look into prima facie existence of the Arbitration Agreement.

13. The Hon'ble Supreme Court in ***Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd., (2003) 7 SCC 418*** laid down the essential ingredients as envisaged under Section 7 of the 1996 Act which read as under:

> *"13. The essential elements of an arbitration agreement are*

as follows:

(1) There must be a present or a future difference in connection with some contemplated affair.

(2) There must be the intention of the parties to settle such difference by a private tribunal.

(3) The parties must agree in writing to be bound by the decision of such tribunal.

(4) The parties must be ad idem."

14. In the present case, the Arbitration Clause is contained in the Agreement to sell and a perusal of Clause No. 16 shows that the said clause fulfils the ingredients enumerated under Section 7 of the 1996 Act. Thus, the said clause constitutes a valid Arbitration Agreement between the parties.

15. In my considered opinion, reliance on ***BGM & M-RPL-JMCT (JV) (Supra)*** to state that in the light of discrepancy, the Arbitration Agreement is not binding, is misplaced. It is a well settled law that if the Arbitration Agreement is contained in a single undisputed document, the referral court need not conduct a mini trial, rather only a *prima facie* proof is required to establish the existence of the Arbitration Agreement on the touchstone of Section 7 of the 1996 Act. Even if the argument of the learned counsel for the petitioner, regarding the alleged discrepancy between Clause No. 15, which permits enforcement before the Civil Court, and Clause No. 16, which refers disputes to arbitration, is considered, the referral court is only required to examine whether the ingredients of Section 7 of the 1996 Act are satisfied. In such a scenario, the referral court cannot conduct an in-

depth examination of the material on record. The relevant paragraphs read as under:

> *"16. What can be deduced from the above decision is that the Referral Court before appointing an arbitral tribunal will have to be prima facie satisfied that an arbitration agreement as contemplated in Section 7 of the 1996 Act exists. For this limited purpose it can scrutinize the documents relied upon by the parties in proof of its existence. Though the burden of proving the existence of arbitration agreement lies on the party seeking to rely on such agreement, only prima facie proof of its existence must be adduced before the Referral Court because the Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to its existence.*
>
> *17. However, where professed arbitration agreement is found in an undisputed document, no trial or inquiry is required as to its existence. In such a situation, the Court would have to simply peruse the same to satisfy itself whether it, prima facie, fulfills the essential ingredients of an arbitration agreement as contemplated under Section 7 of the 1996 Act. But where the professed arbitration agreement is not contained in any one document and is to be inferred from two or more documents, such as exchange of letters or communications, parties may raise various pleas and place various documents to prove or disprove its*

existence. In such a scenario, if from the documents placed, existence of an arbitration agreement, as defined in Section 7, is prima facie made out, Referral Court, instead of undertaking a deeper probe or inquiry, should refer the matter to the arbitral tribunal. More so, because opinion of the Referral Court as to existence of an arbitration agreement is neither binding on the arbitral tribunal nor the Court dealing with the arbitral award.

18. In the instant case, the appellant is relying on just one clause in the contract which, according to the appellant, constitutes an arbitration agreement whereas according to the respondent, though the clause is not disputed, the same does not constitute an arbitration agreement. In such circumstances, the Court while exercising power under Section 11 would not have to hold a mini-trial or an enquiry into its existence rather a plain reading of the clause would indicate whether it is, or it is not, an arbitration agreement, prima facie, satisfying the necessary ingredients of it, as required by Section 7 of the 1996 Act. In our view, such a limited exercise would not transgress the limit set out by sub-section (6-A)7 of Section 11 of the 1996 Act as introduced by 2015 Amendment because the object of such an exercise (i.e., of examination) is to weed out frivolous claims for appointment of an arbitrator/reference to an arbitral tribunal."

(emphasis supplied)

16. Further the Hon'ble Supreme Court in ***Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd., (2025) 2 SCC 192,*** held that even frivolity is also an aspect which should be decided by the Arbitrator. The relevant paragraph reads as under:

> *"19. The scope of inquiry under Section 11 of the 1996 Act is limited to ascertaining the prima facie existence of an arbitration agreement. In the present case, the High Court exceeded this limited scope by undertaking a detailed examination of the factual matrix. The High Court erroneously proceeded to assess the auditor's report in detail and dismissed [Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd., 2024 SCC OnLine Bom 3530] the arbitration application. In our view, such an approach does not give effect to the legislative intent behind the 2015 Amendment to the 1996 Act which limited the judicial scrutiny at the stage of Section 11 solely to the prima facie determination of the existence of an arbitration agreement.*
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> *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."*
>
> *(emphasis supplied)*

17. The reliance in ***Tata Capital Housing Finance Ltd. (supra)*** is also distinguishable on facts. The factual matrix of the said judgement was

such that the arbitration clause would be given a go-by at the option on Tata Capital Housing Finance Ltd., petitioner in the said dispute, in case of any change in legal status of the petitioner in light of notification under SARFESI Act. The same option was not available to the respondent. The Court, inclined with the view that whilst the arbitration clause may categorise the disputes to be referred to the Arbitration, the categorisation of claims are not allowed. Moreover, the court held that the clause negates the essential ingredient of the Arbitration clause as enumerated in Section 7 of the 1996 Act, i.e. mutual promise to submit the disputes between the parties. In the present case there is no such categorisation of claims. The mutuality element is also evident from "*any dispute arises between the parties, the same shall be got decided by a mutually appointed Arbitrator".*

18. Thus, in the present case, it would be apposite to conclude that Clause No. 16 of the said Agreement shows the existence of the mutual Arbitration Agreement between the parties. Further, the issues raised by the petitioner would require detailed analysis as well as evidence which lies within the exclusive domain of the Arbitrator.

19. For the said reasons, the petition is allowed and the following directions are issued:-

    i) Since, the subject matter is about Rs. 50 lakhs Mr. Pritish Sabharwal (Advocate) (Mob. No. 7678296077) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

    ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').

iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned Arbitrator within two weeks from today.

20. In case the arbitrator comes to a finding that the claim is frivolous, appropriate costs will be imposed on the petitioner in terms of ***Goqii Technologies (P) Ltd. (supra),*** which has held as under:

> *"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.*
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> *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…"

21. The application under Section 16 of the 1996 Act, as and when filed by the petitioner, shall be treated as a preliminary issue.

22. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

JANUARY 16, 2026/AS

(corrected and released on 22.01.2026)