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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL DIVISION
ORIGINAL SIDE

AP/83/2025
DILIP KUMAR TARFDAR
VS
SUROJIT DAS AND ANR

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 17th September, 2025.

Appearance:

Mr. Krishnendu Sarkar, Adv.

Mr. Aniruddha Poddar, Adv.

Mr. Anuran Samanta, Adv.

Ms. Meghla Das, Adv.

.... for the petitioner

Mr. Anant Shaw, Adv.

Mr. Mainak Ganguly, Adv.

Ms. Arunima Lala, Adv.

Ms. Mandeep Kaur, Adv.

Mr. Jagatjyoti Nag, Adv.

...for the respondent

The Court: This is an application under Section 11 of the Arbitration and Conciliation Act, 1996. The petitioner submits that disputes arose out of a partnership deed dated January 11, 2022. The said partnership deed contains an arbitration clause. Clause 13 thereof provides that all disputes and differences arising out of an agreement shall be referred to arbitration in

accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996.

Mr. Shaw, learned advocate appearing for the respondent vehemently opposes the prayer for reference on the ground that the agreement was an illegal contract being violative of Section 23 of the Indian Contract Act, 1872. He submits that Rules 2007 and 2008 of the consolidated Rules made under Section 86 of the Bengal Excise Act, 1909 prohibits transfer of license. Incorporation of partners in respect of any business in which the excise license to run a foreign liquorshop is in the name of one person, amounts to a deemed transfer. Such transfer is prohibited by the law. On such score, Mr. Shaw relies on a decision of the Division Bench of the High Court in **Gautam Hazra vs. Pinaki Hazra** reported in **2005(3) CHN 364**. Further contention of Mr. Shaw is that in **VidyaDrolia v. Durga Trading Corpn., (2021) 2 SCC 1, para 139 : (2021) 1 SCC (Civ) 549**, the Hon'ble Apex Court held that validity of an agreement which contained the arbitration clause would be a relevant factor for determining whether the dispute should be referred to arbitration or not.

Heard the rival contentions of the parties. Admittedly, there is a partnership agreement which contains an arbitration clause. Whether the agreement is invalid, is a matter which is within the domain of the learned arbitrator. The learned arbitrator can rule on his own jurisdiction. The respondent can raise the issue by filing an appropriate application under

Section 16 of the Arbitration and Conciliation Act, 1996. The issues of jurisdiction and arbitrability shall be decided by the learned Arbitrator. When there is an arbitration clause, the presumption is in favour of the one-stop forum for resolution of disputes.

By a letter dated September 30, 2024, the petitioner had accepted that the partnership was at a loss and decided to dissolve the said partnership. It was alleged that the other partners neither invested in the business nor discharged their reciprocal obligations.

The fact that there was an agreement between the parties, is not in dispute. The deed contains an arbitration clause. The specific case of the respondent is that the arbitration clause emanates from a void agreement.

In the decision of **Goqii Technologies Private Limited v. Sokrati Technologies Private Limited** reported in **(2025) 2 SCC 192**, the Hon'ble Apex Court was of the view that the scope of enquiry under Section 11 of the Arbitration and Conciliation Act, 1996 was limited to ascertaining only a, prima facie, existence of the arbitration agreement. The relevant portions of the decision is quoted below:-

“17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the short question that falls for our consideration is whether the High Court committed any error in dismissing the appellant's application under Section 11 of the 1996 Act.

18. In a recent pronouncement, relying on the Constitution Bench judgment of this Court in *Interplay Between Arbitration Agreement under A & C Act, 1996 & Stamp Act, 1899, In re, this Court in SBI General Insurance Co. Ltd. v. Krish Spg.*, summarized the law on the scope and standard of judicial scrutiny that an application under Section 11(6) of the 1996 Act can be subjected to. The relevant parts are produced hereinbelow: (*KrishSpg. Case, SCC paras 117 & 128*)

“117. In view of the observations made by this Court in *Interplay Between Arbitration Agreement under A & C Act, 1996 & Stamp Act, 1899, In re*, 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* 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 continue to apply despite the subsequent decision in *Interplay Between Arbitration Agreement under A & C Act, 1996 & Stamp Act, 1899, In re*.

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128. We are also of the view that *ex-facie* frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court. If the

referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, within the benefit of extensive pleadings and evidentiary material.”

In the decision of ***Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re*** reported in **(2024) 6 SCC 1**, the Hon’ble Supreme Court discussed the scope of interference by a referral court and held that the referral court was entitled to cause a, prima facie, examination with regard to existence of an arbitration clause..The relevant paragraphs of ***Interplay*** (supra) are as follows:-

166. *The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.*

167. *Section 11(6-A) uses the expression “examination of the existence of an arbitration agreement”. The purport of using the word “examination” connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression “examination” does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, *The Law Lexicon* (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction,*

including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. **Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement.** A similar view was adopted by this Court in *Shin-Etsu Chemical Co. Ltd. v. AkshOptifibre Ltd.* [*Shin-Etsu Chemical Co. Ltd. v. AkshOptifibre Ltd.*, (2005) 7 SCC 234]”

Reference is made to the decision of the Hon’ble Supreme Court in

Aslam Ismail Khan Deshmukh vs ASAP Fluids Private Limited and

Another reported in **(2025) 1 SCC 502**. The relevant part is quoted below:-

“50. As evident from the aforesaid discussion and especially in light of the observations made in *KrishSpg.* [*SBI General Insurance Co. Ltd. v. KrishSpg.*, (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] , this Court cannot conduct an intricate evidentiary enquiry into the question of when the cause of action can be said to have arisen between the parties and whether the claim raised by the petitioner is time-barred. This has to be strictly left for the determination by the Arbitral Tribunal. All other submissions made by the parties regarding the entitlement of the petitioner to 4,00,000 and 2,00,010 equity shares in Respondent 1 company are concerned with the merits of the dispute which squarely falls within the domain of the Arbitral Tribunal.

51. It is now well-settled law that, at the stage of Section 11 application, the referral Courts need only to examine whether the arbitration agreement exists — nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral Courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process. This is especially possible in instances, including but not limited to, where the claimant canvasses either ex facie time-barred claims or claims which have been discharged through “accord and

satisfaction”, or cases where the impleadment of a non-signatory to the arbitration agreement is sought, etc.

52. In order to balance such a limited scope of judicial interference 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.”

In my opinion, all objections can be raised before the learned arbitrator as the referral Court is not the appropriate Court to decide the validity of the agreement at this stage, when the respondent no. 1 has himself referred to the same and decided to dissolve the partnership. Secondly, the scope of the referral Court is only to ascertain the existence of an arbitration agreement. Section 116A which was inserted by the amendment 2016, although proposed to be omitted by the amending Act of 2019 has not yet been notified. Accordingly, the said provision remains in the statute book. It provides that the High Court shall notwithstanding any judgment, decree and order of the Court, confine its examination to the existence of the arbitration agreement. The Hon’ble Apex Court has also held that the referral Court should not travel into the area of evidence but, only satisfy itself about the existence of an arbitration clause. The decision in Gautam Hazra (supra) was rendered in a case where a plaint was rejected by the learned Trial Judge on the ground that the suit was barred by law. Such decision was upheld on the ground that

Sections 207 and 208 prohibited deemed transfer and only the Collector could induct partners into the business. This issue was decided on the basis of the provision of Order 7 Rule 11 of the Code of Civil Procedure. The Trial Court has the power to reject a plaint on such ground. Here, the respondent can raise the point on the invalidity of the deed of partnership before the learned arbitrator at the very initial stage, by filing an appropriate application.

All other issues raised by Mr. Shaw shall also be open for adjudication by the learned arbitrator. The decision of Vidya Drolia (Supra) has now been clarified by subsequent decisions of the Hon'ble Apex Court. The Apex Court has also clarified the distinction between examination by a Court under Sections 8 and 11 of the said Act. While Section 8 requires the Court to make an enquiry with regard to the validity of an arbitration agreement. The enquiry under Section 11 will be in respect of existence of an arbitration agreement. The sections are clear and distinct.

Moreover, if the learned Arbitrator holds that the respondent was unnecessarily dragged into a litigation, then costs may be imposed on the petitioner.

Under such circumstances, this application is allowed by appointing - Smt. Chandreyi Alam, learned Advocate, Bar Association, Room No. 11, as the sole arbitrator, to arbitrate upon the dispute between the parties.

The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix her remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)

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