



2025:DHC:4875



\$~O-1 and O-2

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

+ **ARB.P. 38/2025**

Date of Decision: **21.05.2025**

IN THE MATTER OF:
TATA CAPITAL LIMITED

(TRANSFEREE OF TATA CAPITAL FINANCIAL SERVICES
LIMITED PURSUANT TO AN APPROVED SCHEME OF
ARRANGEMENT BY NCLT, MUMBAI)

REGISTERED OFFICE AT:

11th FLOOR, TOWER A, PENINSULA BUSINESS PARK
GANPATRAO KADAM MARG, LOWER PAREL
MUMBAI – 400013

BRANCH OFFICE AT:

7TH FLOOR VIDEOCON TOWER, BLOCK E1,
JHANDEWALA EXTENSION,
NEW DELHI- 110055

.....PETITIONER

(Through: Mr. Savyasachi K. Sahai, Adv.)

versus

1. BERRYS AUTO ANCILLARIES PRIVATE LIMITED

REGISTERED OFFICE AT:

8/4 EAST PATEL NAGAR,
DELHI, INDIA - 110 005

ALSO AT:

B 16, SIL ANCILLARY ESTATE,
INDUSTRIAL AREA AMAUSI,
AMAUSI, NADARGANJ,
LUCKNOW, UTTAR PRADESH - 226 008

AND AT:

C-23, UPSIDC INDUSTRIAL AREA,
INDUSTRIAL AREA AMAUSI,
AMAUSI, LUCKNOW, UTTAR PRADESH-226 008

AND AT:

G-15, UPSIDC INDUSTRIAL AREA,

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KUMAR KAURAV





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CHINHAT INDUSTRIAL AREA, DEVA ROAD,
LUCKNOW, UTTAR PRADESH - 226 019

2. **MR. DEEPAK SURI S/O MR. RAM LABHAYA SURI**
RESIDENT OF:
HOUSE NO. 8/4, OPPOSITE ANDHRA BANK BRANCH,
EAST PATEL NAGAR, NEW DELHI-110 008
3. **MR. MOHIT SURI S/O MR. DEEPAK SURI**
RESIDENT OF:
C-203, NJRALA NAGAR,
LUCKNOW, UTTAR PRADESH - 226 020
4. **MS. GEETA SURI W/O MR. DEEPAK SURI**
RESIDENT OF:
HOUSE NO. 8/4. OPPOSITE ANDHRA BANK BRANCH
EAST PATEL NAGAR, NEW DELHI - 110 008
5. **MR. ROHIT SURI S/O MR. DEEPAK SURI**
RESIDENT OF:
C-203, NIRALA NAGAR,
LUCKNOW, UTTAR PRADESH - 226 020

.....Respondent

(Through: Mr. Amrendra Kumar, Adv.)

+ ARB.P. 46/2025

TATA CAPITAL LIMITED

(TRANSFEREE OF TATA CAPITAL FINANCIAL SERVICES
LIMITED PURSUANT TO AN APPROVED SCHEME OF
ARRANGEMENT BY NCLT, MUMBAI)

REGISTERED OFFICE AT:

11th FLOOR, TOWER A, PENINSULA BUSINESS PARK
GANPATRAO KADAM MARG, LOWER PAREL
MUMBAI – 400013

BRANCH OFFICE AT:

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.....Petitioner

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Versus

BERRYS AUTO ANCILLARIES PRIVATE LIMITED

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8/4 EAST PATEL NAGAR,
DELHI, INDIA - 110005

ALSO A VATLARE AT:

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AMAUSI, LUCKNOW, UTTAR PRADESH-226 008

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G-15, UPSIDC INDUSTRIAL AREA,
CHINHAT INDUSTRIAL AREA, DEVA ROAD,
LUCKNOW, UTTAR PRADESH - 226 019

.....Respondent

(Through: Mr. Amrendra Kumar, Adv.)

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petitions have been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (1996 Act), seeking the appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties.
2. For the sake of brevity, the pertinent facts of the aforesaid two

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petitions are considered as under:-

ARB.P. 38/2025

3. The facts would indicate that respondent No.1 applied for finance facility to the petitioner. The Facility was initially sanctioned on 10.08.2018 and subsequently renewed or modified multiple times through various sanction and extension letters, with corresponding agreements executed on each occasion. The repayment terms were adjusted due to requests for a moratorium during COVID-19 and other negotiations. Pursuant to the request of respondent No.1, the petitioner, *vide* sanction letter dated 08.05.2023, appears to have removed and modified the facility. Pursuant to the terms therein, the respondent and petitioner executed *inter alia* the Loan cum Guarantee Agreement for Channel Finance dated 22.07.2023 read with the Master Terms and Conditions.

4. It is the case of the petitioner that respondent no.1 has committed defaults in repayment of the amounts due. Subsequently, the petitioner was constrained to issue a Loan Recall Notice dated 27.11.2024 recalling the Facility and invoking arbitration under Clause 12 of the Channel Finance agreement.

ARB.P. 46/2025

5. The facts manifest that on the request of the respondent, the petitioner sanctioned a term loan *vide* sanction letter dated 14.10.2020, which was duly accepted and countersigned by the respondent. Following this, the respondent and the petitioner executed the Term Loan Agreement on 17.10.2020. Pursuant to the agreement, the sanctioned loan amount was disbursed to the respondent. However, as per the petition the respondent defaulted in repaying the loan, thereby breaching the terms of the financing



documents. Thereafter, the petitioner issued a Loan Recall Notice dated 15.02.2024, recalling the facility and invoking arbitration.

6. In view of the aforesaid, the petitioner has filed the present petition seeking the appointment of a sole arbitrator under Section 11 of the 1996 Act.

7. The respondent by way of filing their reply has raised multiple objections including the objection with respect to the maintainability of the instant petition on two fundamental grounds. First, respondent No.4 has not signed the agreement and his signatures are forged. Second, the petitioner has not complied with the RBI's guidelines for restructuring of the loan.

8. I have heard learned counsel appearing for the parties and perused the record.

9. A perusal of the above petitions reveals that in two of the petitions, i.e., ARB.P. 38/2025 and ARB.P. 46/2025, the parties are the same and disputes also arose out of similar factual matrices involving disputes with respect non-payment of loan amount and breach of fiscal discipline.

10. In ARB.P. 187/2025 and other connected matters titled as ***Railtech Technologies Pvt Ltd v Union Of India***, this Court while considering the decisions of the Supreme Court in ***P.R. Shah, Shares & Stock Broker (P) Ltd. v. B.H.H. Securities (P) Ltd¹***, ***Gammon India Ltd. v. National Highways Authority²*** held that since all petitions therein involved similar issues, a consolidation of issues and appointment of single arbitrator would serve the ends of justice, ensure consistency in findings, and avoid multiplicity of proceedings.

¹(2012) 1 SCC 594

² 2020 SCC OnLine Del 659

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11. On the conspectus of the aforesaid legal position, the Court has considered Clause 12 of the Channel Finance Agreement and of the Term Loan agreement, read as under:-

"Clause 12 of the Channel Finance Agreement 6 (dated 22.07.2023):

"If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under these T&Cs or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitrator to be appointed as per the procedure below and to be held at such place as agreed by the parties in Serial No. 17 of Annexure 1 hereto of the Agreement. The Party invoking the arbitration ("Claimant") shall address a notice to the other party ("Respondent") suggesting the names of not more than three arbitrators, all of whom shall be either retired judges of the District Court, High Court or the Supreme Court or a lawyer having minimum 10 years, relevant experience. The Respondent shall either: (i) Confirm in writing acceptance of one amongst the proposed names as the sole arbitrator to the Claimant within a period of ten (10) days from the date of the notice ("Notice Period"). or

(ii) Convey objection, if any, in writing to the Claimant against the proposed names of the sole arbitrator within the said Notice Period. However, if the Claimant does not receive any response from the Respondent within the said Notice Period, the Claimant shall be entitled to nominate any one person from amongst the proposed three names as the sole arbitrator and such arbitrator shall be deemed to be appointed by both the Parties. In the event, the Respondent conveys its objection as per (i) above then the sole arbitrator will be appointed by a Court having jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliations Act, 1996, together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The arbitration proceedings shall be conducted in English language. The award of the arbitrator shall be final and binding on all parties concerned. The cost of arbitration shall be borne by the Obligors. "

"12. Arbitration

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or





anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held at the place as mentioned at Serial No. 17 of Annexure 1 hereto, in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the Obligors.”

12. 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. This Court as well in the order dated 24.04.2025 in the case of ARB.P. 145/2025 titled as ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd*** 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**³, 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**⁴ 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.*

*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.**⁵, and adopted in **NTPC Ltd. v. SPML Infra Ltd.**⁶ 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:-*

“114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at

³ 2024 SCC OnLine SC 1754

⁴ 2023 SCC OnLine SC 1666.

⁵ (2021) 2 SCC 1.

⁶ (2023) 9 SCC 385.

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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.**⁷, 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.

21. Before we conclude, we must clarify that the limited jurisdiction of the referral courts under Section 11 must not

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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**”.*

9. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, Mr. Ishaan S. Sharma (Mobile No +919555777622, Email id: advocateishaansharma@gmail.com) is





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appointed as the sole Arbitrator.

10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (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.

11. The learned arbitrator is also requested to file the requisite disclosure under Section 12 (2) of the 1996 Act within a week of entering on 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. The Arbitrator shall also be at liberty to deal with the fundamental objections besides dealing with all other possible objections raised by the respondents during the arbitral proceedings.

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. Let the copy of the said order be sent to the appointed Arbitrator through the electronic mode as well.

16. Accordingly, the instant petitions stands disposed of.

PURUSHAINdra KUMAR KAURAV, J

MAY 21, 2025/DPA/MJ

Click here to check corrigendum, if any

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