



2025:DHC:6428



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

+ **ARB.P. 91/2025**

Date of Decision: **31.07.2025**

IN THE MATTER OF:

ASHOK LEASING LIMITED
1378/21, NAIWALA, KAROL BAGH,
NEW DELHI-110005
THROUGH ITS DIRECTOR SHRI VIPIN TYAGI

..... PETITIONER

Through: Mr.Vikas Gupta and Mr.Ieshaan
Gupta, Advocates.

Versus

V. SRINIVASULU
S/O VALLEPU VENKATA RAMANA
FLAT NO. 302 & 303, SREE PEARL APARTMENT,
3RD CROSS, MARUTHI NAGAR, ANANTPUR,
ANDHRA PRADESH- 515004

.... RESPONDENT

Through: *Appearance not given.*

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Section 11(6) of the



Arbitration and Conciliation Act, 1996 (the 1996 Act), seeking appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties under the Loan Agreement dated 21.06.2023.

2. The facts of the case, as stated in the petition, reveal that in the year 2023, the respondent approached the petitioner seeking a loan of INR 25,00,000/- assuring and representing that the said amount would be repaid in accordance with the terms and conditions stipulated in the loan agreement. Relying upon the said assurance and representation, the petitioner extended a loan of INR 25,00,000/- to the Respondent through a Loan Agreement executed on 21.06.2023. The loan amount was disbursed via cheque no. 071996 and UTR No. 23172721694, both dated 21.06.2023.

3. Learned counsel appearing on behalf of the respondent submits that the reply has already been filed and the same is lying under objections.

4. Learned counsel for the respondent, however, submits that the purported Loan Agreement dated 21.06.2023 is forged and fabricated. He contends that there is no question as to why the respondent, after availing the loan, would not have paid any amount. He, therefore, contends that from the face of the Loan Agreement dated 21.06.2023, the same is forged and fabricated.

5. The aforesaid contentions are vehemently opposed by learned counsel for the petitioner, and he contends that a valid agreement dated 21.06.2023 has been executed, and the respondent has availed the loan facility. He, however, submits that in any case, if the respondent has any objection *qua*



the aforesaid aspect, the same can be the subject matter of adjudication before the Arbitral Tribunal.

6. The Court has considered the aforesaid submissions and also perused the record.

7. Article 8 of the Loan Agreement dated 26.03.2020 is extracted as under:-

“8.DISPUTE RESOLUTION: -.

*In the event of,,a failure of loan repayment or a dispute between the Parties regarding the matters outlined in this agreement the Parties will make a good faith attempt to resolve the differences. If they are unable to reach a resolution, any disputes or differences arising between the Parties, whether during the term of this agreement or after its discharge or termination, will be referred to arbitration in accordance with the Indian Arbitration & Conciliation Act, 1996. The arbitration will be conducted by a sole Arbitrator appointed by the Lender. If necessary, a replacement Arbitrator will be nominated to fill any vacancy. However, to invoke the arbitration clause, the Party invoking it must have paid the entire pending principal amount, interest, penal interest, and other charges as specified in this Agreement. Both parties are obligated to fulfill their obligations under this Agreement during the arbitration proceedings
The awards made by the Arbitrator will be final and binding upon the Parties. The arbitration proceedings will take place in Delhi, and the Parties agree that the courts in Delhi shall have exclusive jurisdiction over any matters arising from this Agreement.”*

8. 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 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**¹, 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**² 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.**³, and adopted in **NTPC Ltd. v. SPML Infra Ltd.**⁴ 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 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.**⁵, however, has held that the referral Courts under Section 11 must not be misused by one party in order to

¹ 2024 SCC OnLine SC 1754

² 2023 SCC OnLine SC 1666.

³ (2021) 2 SCC 1.

⁴ (2023) 9 SCC 385.

⁵ (2025) 2 SCC 192



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 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**⁶.*

9. Thus, in view of the legal position explicated hereinabove, reserving all rights and contentions of the parties open and to be agitated before the Arbitral Tribunal, the Court deems it appropriate to appoint the Arbitrator.

10. Accordingly, Mr. Shyam Sharma, Advocate (Mobile No +91-9810156965, Email ID- law.shyam2@gmail.com, globallawyers287@gmail.com) is appointed as the sole Arbitrator.

11. 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.

12. The learned arbitrator is also requested to file the requisite disclosure

⁶ (2025) 2 SCC 147.



2025:DHC:6428



under Section 12 (2) of the Act within a week of entering on reference.

13. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.

14. 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.

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

16. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

JULY 31, 2025

Nc/mj