



2025:DHC:4580



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 219/2025 & I.A. 12195/2025**

Date of Decision: 14.05.2025

M/S MKU LTD

D-20 1ST FLOOR

DEFENCE COLONY, NEW DELHI-110024

VIBHAV GUPTA, DIRECTOR

.....Petitioner

Through: Ms. Geeta Sharma, Adv.

versus

UNION OF INDIA

THROUGH

DIRECTOR (ORDINANCE)

HEADQUARTERS STRATEGIC

FORCE COMMAND,

C/O-56, APO

PIN; 908547

....Respondent

Through: Mr. Sushil Kumar Pandey, SPC with
Mr. Vaibhav Soni, Adv.**CORAM:****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****JUDGMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. Heard learned counsel for the parties.
2. Let Union of India be impleaded through the Ministry of Defence, represented by the Secretary of the concerned department.
3. The facts of the case would indicate that a tender enquiry dated 16.10.2017 was issued for the supply of Normal Ballistic Helmets. The

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petitioner submitted its bid, pursuant to which a purchase order dated 06.12.2017 was placed by the respondent for the procurement of 3,000 Normal Ballistic Helmets.

4. According to the petitioner, it was specifically stated in the bid that a customs duty exemption certificate would be required for the import of raw materials. However, the petitioner contends that no such certificate was provided along with the purchase order. Despite various communications between the parties, the grievances of the petitioner remained unresolved. Consequently, on 17.09.2019, the petitioner issued a legal notice calling upon the respondent to refund the liquidated damages amount within 60 days, failing which the petitioner intended to invoke the provisions of the Arbitration and Conciliation Act, 1996 (1996 Act).

5. It is stated by the petitioner that the legal notice sent by the petitioner was refuted by the respondent. In interregnum, the petition was filed by the petitioner under Section 11 of the 1996 Act, which was subsequently withdrawn with liberty to file afresh in case the dispute could not be resolved amicably, as recorded in the order dated 16.08.2021. Thereafter, multiple meetings were held, however, the grievance of the petitioner remained unresolved, leading to the filing of the present petition.

6. Upon issuance of notice, the respondent filed its reply opposing the contentions raised by the petitioner.

7. The respondent has taken the stand that the claim raised in the present petition is time-barred. Additionally, it is contended that the petitioner has waived the arbitration clause, as recorded in the minutes dated 27.07.2023, wherein the contract was allegedly novated to the extent of the arbitration provision.



8. Learned counsel for the petitioner submits that although minutes were signed on 27.07.2023, the same were never acted upon by the respondent. Therefore, the petitioner argues that they should not be left without remedy. It is contended that a dispute has arisen and that a valid arbitration clause exists.

9. I have heard the submissions made by the parties and have perused the record.

10. Clause 3 of Part-III of the work order reads as under:

“3. Arbitration: All disputes or differences arising out of or in connection with the Supply Order shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Supply Order or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The Arbitration is as per Form DPM-7 (for indigenous trade)/ DPM-8 (for foreign supplies) / DPM-9 (for PSUs) (Available I MoD website and can be provided on request).”

11. It is, thus, seen that there exists a valid arbitration clause.

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 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**, 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** 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.**, 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 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.**, 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 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

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2025:DHC:4580



*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**".*

13. The Court, therefore, finds that, as per the respondent's own showing, the matter was discussed in the year 2023. Accordingly, the cause of action continues to subsist, allowing the petitioner to pursue its grievances. Hence, it cannot be said that the claim of the petitioner is wholly time-barred. Even otherwise, this aspect can appropriately be examined by the learned Arbitrator.

14. As regards the alleged novation of the contract, the minutes referred to have not been placed on record by the respondent on the ground that they are confidential documents. The contention of plaintiff that no payment was made by the respondent pursuant to the said minutes, remains uncontroverted. There is nothing on record to indicate that any payment was made to the petitioner after the minutes were recorded. This issue, too, may be examined and decided by the learned Arbitrator.

15. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, Mr. Shubham Shukla (Mobile No +91-8182005532; Email ID: office.advshubhamshukla@gmail.com) is appointed as the sole Arbitrator.

16. 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.

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





2025:DHC:4580



18. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.
19. 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.
20. 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 newly appointed Arbitrator through the electronic mode as well.
21. Accordingly, the instant petition stands disposed of along with pending application.

PURUSHAINDRA KUMAR KAURAV, J

MAY 14, 2025

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Click here to check corrigendum, if any

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