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

\+ ARB.P. 225/2025

Date of decision: 26.05.2025

ADITYA BIRLA FINANCE LIMITED
THROUGH ITS AUTHORISED REPRESENTATIVE
INDIAN RAYON COMPOUND,
VERAVAL, GUJARAT- 362266

ALSO AT:
1st FLOOR, VIJAYA BUILDING,
17, BARAKHAMBA ROAD,
NEW DELHI — 110001 .....Petitioner

Through: Mr. Arvind Nayar, Sr. Adv with Mr. Puneet Singh Bindra, Mr. Akshay Joshi, Mr. Charu Modi, Ms. Kriti Dang and Mr. Rishabh Gupta, Advs.

versus

DILIP BHAGWAN BHAI PATEL
(PRINCIPAL BORROWER)
84, SATVA HOMES, OPPOSITE KHODIYAR MANDIR,
GST COMPOUND, NEW RANIP,
DIGVIJAY NAGAR,
ANMEDABAD- 382470 .....Respondent No.1

M/S SHAKTI INFRASTRUCTURE (CO-BORROWER)
A PROPRIETORSHIP CONCERN,
THROUGH ITS PROPRIETOR MR.
DILIP BHAGVANBHAI PATEL
B-102, GOPAL PALACE, NEAR HOTEL
MAAN RESIDENCY,
NEHRU NAGAR, AMBAWADI
AHMEDABAD- 380015 .....Respondent No.2

MRS. YAMINIBEN DILIPBHAI PATEL (CO-BORROWER)
84, SATVA HOMES, OPPOSITE
KHODIYAR MANDIR,
GST COMPOUND, NEW
RANIP, DIGVIJAY NAGAR,
ANMEDABAD- 382470 .....Respondent No.3

M/S NANCY ENTERPRISE (CO-BORROWER)
A PROPRIETORSHIP CONCERN,
THROUGH ITS PROPRIETOR MRS.
YAMINIBEN DILIPBHAI PATEL
1-C-401, AARYA VILLA, OPPOSITE
YOGESHWAR KUTIR, ANAND
PARTY PLOT ROAD, GST CROSSING,
NEW RANIP, DIGYIJAY NAGAR
AHMEDABAD- 382470 .....Respondent No.4

RELIANCE PROJECTS AND PROPERTY MANAGEMENT SERVICES LTD,
VRAJ NEAR SUVIDHA SHOPPING CENTRE,
PALDI, AHMEDABAD

ALSO AT-
OFFICE-101, SAFFRON, NR CENTRE POINT
PANCHWATI 5 RASTA,
AMBAWADI, AHMEDABAD,
AHMEDABAD, GUJARAT, INDIA,
380006 .....Respondent No.5

Through: Ms. Niyati Kohli and Ms. Devika Mohan, Advs for R-1 to 4.
Mr. Shubhvanshu, Mr. Vishnu Sharma A. S., Ms. Namrata Saraogi and Mr. Ekansh Sisodia, Advs for R-5.

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\+ O.M.P.(I) (COMM.) 358/2024 and I.A 46550/2024

ADITYA BIRLA FINANCE LIMITED
THROUGH ITS AUTHORISED REPRESENTATIVE
INDIAN RAYON COMPOUND, VERAVAL,
GUJARAT- 362266

ALSO AT:

UNIT NO. 402, 4th FLOOR, 24
CAMAC SQUARE, KOLKATA, W.B. -700016
1st FLOOR, VIJAYA BUILDING,
17, BARAKHAMBA ROAD,
NEW DELHI — 110001 .....Petitioner

Through: Mr. Arvind Nayar, Sr. Adv with Mr. Puneet Singh Bindra, Mr. Akshay Joshi, Mr. Charu Modi, Ms. Kriti Dang and Mr. Rishabh Gupta, Advs.

versus

DILIP BHAGWAN BHAI PATEL (PRINCIPAL BORROWER)
84, SATVA HOMES, OPPOSITE KHODIYAR MANDIR,
GST COMPOUND, NEW RANIP,
DIGVIJAY NAGAR,
ANMEDABAD- 382470 .....Respondent No.1

M/S SHAKTI INFRASTRUCTURE (CO-BORROWER)
A PROPRIETORSHIP CONCERN,
THROUGH ITS PROPRIETOR MR.
DILIP BHAGVANBHAI PATEL
B-102, GOPAL PALACE, NEAR HOTEL
MAAN RESIDENCY,
NEHRU NAGAR, AMBAWADI
AHMEDABAD- 380015 .....Respondent No.2

MRS. YAMINIBEN DILIPBHAI PATEL (CO-BORROWER)
84, SATVA HOMES, OPPOSITE
KHODIYAR MANDIR,
GST COMPOUND, NEW
RANIP, DIGVIJAY NAGAR,
ANMEDABAD- 382470 .....Respondent No.3

M/S NANCY ENTERPRISE (CO-BORROWER)
A PROPRIETORSHIP CONCERN,
THROUGH ITS PROPRIETOR MRS.
YAMINIBEN DILIPBHAI PATEL
1-C-401, AARYA VILLA, OPPOSITE
YOGESHWAR KUTIR, ANAND
PARTY PLOT ROAD, GST CROSSING,
NEW RANIP, DIGYIJAY NAGAR
AHMEDABAD- 382470 .....Respondent No.4

PADAM ASSOCIATES
A PARTNERSHIP FIRM HAVING THEIR
REGISTERED OFFICE AT
PLOT NO. 448, SUREEL, BUSINESS HOUSE,
NEAR MUKTIDHAM, NARODA CANAL,
NARODA DEHGHAM ROAD, NARODA,
AHMEDABAD-382330 THROUGH ITS
DESIGNATED PARTNER MR.PURAV
MAHENDRABHAI SHAH .....Respondent No.5

RELIANCE PROJECTS AND PROPERTY MANAGEMENT SERVICES LTD,
VRAJ NEAR SUVIDHA SHOPPING CENTRE,
PALDI, AHMEDABAD .....Respondent No.6

Through: Ms. Niyati Kohli and Ms. Devika Mohan, Advs for R-1 to 4.
Mr. Shubhvanshu, Mr. Vishnu Sharma A. S., Ms. Namrata Saraogi and Mr. Ekansh Sisodia, Advs for R-6.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

ARB.P. 225/2025

1. The present petition has been filed under Section 11 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.

2. The facts of the case would indicate that the petitioner had approached respondent no.1 along with respondent nos. 2 to 4 for a grant of a financing facility being term loan for an amount of Rs. 7,00,00,000/- to utilize the said amount for the purpose of commercial purchases and meeting long-term capital.

3. The same was accepted by the petitioner and, accordingly, on 31.12.2021, the petitioner and respondent nos. 1 to 4 entered into a term loan agreement.

4. On account of certain fiscal indiscipline by the respondents, the petitioner invoked the arbitration clause and issued a notice under Section 21 of the 1996 Act. Despite the aforesaid notice, the petitioner did not receive a positive response from the respondents.

5. Accordingly, the petitioner has approached this Court by way of the instant petition.

6. The respondents, on a notice being issued, have filed their reply and have opposed the instant petition.

7. One of the contentions raised by respondent nos. 1 to 4 is regarding the unilateral appointment of the arbitrator by the petitioner.

8. Furthermore, learned counsel for respondent no.5 submits that respondent no.5 is not the signatory to the arbitration agreement. He submits that respondent no.5 is a tenant of respondent nos. 1 to 4. He

further submits that respondent no.5 be deleted from the array of the parties.

9. Mr. Arvind Nayar, learned senior counsel for the petitioner submits that he has no objection to the *de novo* appointment of sole arbitrator, and in view thereof, the unilateral appointment made by the petitioner earlier be ignored.

10. Having considered the aforesaid submissions, the Court finds that the respondent no.5, by way his reply, has taken a fair stand of permission to depositthe admitted rentals before the Court. It is the stand of respondent no.5 that since the properties, which are mortgaged with the petitioner, were on rent with respondent no.5, therefore, respondent no.5 has no objection if the Court directs respondent no.5 to deposit the accrued rent before the Court.

11. Clause 17 of the agreement reads as under:-

> "*17 Arbitration:*
> *All claims or disputes arising out of or in relation to this Agreement shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by Lender. All parties to this Agreement hereby expressly consent to Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by Lender acting as the sole appointing authority. The place of arbitration shall be Delhi. Parties agree that the courts in Delhi shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996.*
> *Notwithstanding anything contained hereinabove, in the event the legal status of the Facility Provider changes or in the event of the law being made or amended so as to bring the Facility Provider under The Recovery of Debts Due to Banks and Financial Instih1tions Act, 1993 (the "DRT Act"), to proceed to recover dues from the Borrower(s) under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the Facility Provider, cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the Facility Provider such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date of the making of the law or the date when amendment becomes effective or the date when the Facility Provider exercises the option of terminating. the*

mandate of arbitrator, as the case may be. Provided that neither a change in the legal status of the Facility Provider nor a change in law as referred to in this sub paragraph above, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement."

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,*** *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:-*
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>> *"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 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. Under the aforesaid circumstances, the objections so raised by respondents can be looked into by the arbitrator.

14. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, Hon'ble Mr Justice Mohammad Rafiq, former Chief Justice of Madhya Pradesh High Court, Orissa High Court, Himachal Pradesh High Court, and Meghalaya High Court (Mobile No. +91 9414055777 e-mail id: justicemrafiq@gmail.com) is appointed as

the sole Arbitrator.

15. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the Act 1996.

16. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the 1996 Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

17. The parties shall share the arbitrator's fee and arbitral cost, equally.

18. All rights and contentions of the parties in relation to the claims/counterclaims are kept open, including an application for handing over the rentals by respondent no.5, to be decided by the Sole Arbitrator on their merits, in accordance with law,

19. 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.

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

21. Accordingly, the instant petition stands disposed of.

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22. Since the Court has appointed the Arbitrator in ARB.P. 225/2025, this petitioner be treated to be an application under Section 17 of the Act 1996, and the same be dealt with by the Arbitrator.

23. In view of the aforesaid, the instant petition along with the pending application also stands disposed of.

24. It be noted that on 16.10.2024 and 28.11.2024, certain directions have been passed in the instant petition. The directions, so passed, shall remain in

force till the disposal of the application under Section 17 of the 1996 Act by the Arbitrator.

PURUSHAINDRA KUMAR KAURAV, J

MAY 26, 2025
aks/mj

Click here to check corrigendum, if any