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

+ **ARB.P. 234/2025**

M/S MONEYWISE FINANCIAL SERVICES PVT. LTD.

.....Petitioner

Through: Ms. Preeti Kumar, Mr. Ranjeet
Kumar, Ms. Mehvish Khan, Mr.
Aman Chaudhry, Adv.

versus

**M/S JAI BALAJI SECURITY SERVICES THROUGH ITS
PROPRIETOR AND ORS**

.....Respondents

Through: Mr. Dua, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

21.05.2025

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator to adjudicate the disputes between the parties, arising out of a Master Loan Agreement dated 31.10.2021.
2. In pursuant to the said Agreement, the petitioner advanced a loan of Rs.20,11,584/- to the respondents.
3. The respondents were obligated to repay the said loan amount in 24 equal monthly installments of Rs.1,02,381/-.
4. Respondent No. 1 is the principal borrower and respondent Nos. 2, 3 and 4 are the co-borrowers.
5. Since Mr. Nafe Singh, the proprietor of respondent No. 1 firm has expired, respondent Nos. 2 is impleaded as legal heir of late Mr. Nafe Singhas well as the co-borrower.
6. The said Agreement contains an arbitration clause, being Clause No.



8.2, which reads as under:

“8.2. Arbitration: Any disputes, differences, controversies and questions directly or indirectly arising at any time hereafter between the Parties or their respective representatives or assigns, arising out of or in connection with this Agreement (or the subject matter of this Agreement), including, without limitation, any question regarding its existence, validity, interpretation, construction, performance, enforcement, rights and liabilities of the Parties, or termination ("Dispute"), shall be referred to a sole arbitrator duly appointed by the Lender. The language of the arbitration shall be English. The seat of the arbitration shall be at New Delhi and the language of proceedings shall be English. The award rendered shall be in writing and shall set out the reasons for the arbitrator's decision. The costs and expenses of the arbitration shall be borne equally by each Party, with each Party paying for its own fees and costs including attorney fees, except as may be determined by the arbitration tribunal. Any award by the arbitration tribunal shall be final and binding.”

7. Since the respondents defaulted in making payments, the petitioner issued notice invoking arbitration *vide* legal notice dated 16.10.2024 and thereafter, filed the present petition.
8. Mr. Dua, learned counsel for the respondents, has filed a reply however the same is not on record.
9. A copy of the said reply has been handed over in Court today.
10. He states that the said Agreement has not been signed by respondent Nos. 2, 3 and 4 and hence, is a fraud.
11. The Hon'ble Supreme Court in the judgment of ***SBI General Insurance Co. Ltd. v. Krish Spinning, (2024) 7 SCR 840***, and more particularly para Nos. 113 to 119, held as under:



“113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re: Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:

“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]” (Emphasis supplied)

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).

115. The dispute pertaining to the “accord and satisfaction” of claims is not one which attacks or questions the existence of the arbitration agreement in any way. As held by us in the preceding parts of this judgment, the arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by “accord and satisfaction”.

116. The question of “accord and satisfaction”, being a mixed question of law and fact, comes within the exclusive jurisdiction of the arbitral tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the arbitral tribunal, should not be looked into by the referral court, even for a prima facie determination, before the arbitral tribunal first has had the opportunity of looking into it.

117. By referring disputes to arbitration and appointing an arbitrator by exercise of the powers under Section 11, the referral court upholds and gives effect to the original understanding of the contracting parties that the specified disputes shall be resolved by arbitration. Mere appointment of the arbitral tribunal doesn’t in any way mean that the referral court is diluting the sanctity of “accord and satisfaction” or is allowing the claimant to walk back on its contractual undertaking. On the contrary, it ensures that the principal of arbitral autonomy is upheld and the legislative intent of minimum judicial interference in arbitral proceedings is given full effect. Once the arbitral tribunal is constituted, it is always open for the defendant to raise the issue of



“accord and satisfaction” before it, and only after such an objection is rejected by the arbitral tribunal, that the claims raised by the claimant can be adjudicated.

118. Tests like the “eye of the needle” and “ex-facie meritless”, although try to minimise the extent of judicial interference, yet they require the referral court to examine contested facts and appreciate prima facie evidence (however limited the scope of enquiry may be) and thus are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal.

119. Appointment of an arbitral tribunal at the stage of Section 11 petition also does not mean that the referral courts forego any scope of judicial review of the adjudication done by the arbitral tribunal. The Act, 1996 clearly vests the national courts with the power of subsequent review by which the award passed by an arbitrator may be subjected to challenge by any of the parties to the arbitration.”

12. On perusal, I am of the view that the referral Court is only required to *prima-facie* see the existence of the arbitration clause.
13. The issue that the same is a product of fraud and has not been signed by the respondent Nos. 2, 3 and 4 requires evidence, which can be adjudicated by the learned arbitrator only.
14. However, the same is required to be treated as a preliminary issue.
15. For the said reasons, the petition is allowed and the following directions are issued:-
 - i) Mr. Samrat K. Nigam (Mob. No. 9582801689), learned senior counsel, who is present in Court, is appointed as a Sole Arbitrator to adjudicate the disputes between the parties and shall decide the issue as a preliminary issue.



- ii) The fee of the arbitrator is fixed at Rs. 1 lakh to be paid by both the parties equally.
 - iii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').
 - iv) In case the arbitration proceeds after the decision of the preliminary issue, the remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
 - v) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - vi) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
16. The present petition is disposed of in the aforesaid terms.
17. The reply handed over in Court today is taken on record.

MAY 21, 2025/sp

JASMEET SINGH, J

[Click here to check corrigendum, if any](#)