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

+ **ARB.P. 268/2025**

Date of Decision: **07.05.2025**

IN THE MATTER OF:

TATA CAPITAL LIMITED

THROUGH ITS AUTHORIZED REPRESENTATIVE:

SH. NISHANT GAUTAM

HAVING ITS REGISTERED OFFICE AT:

11TH FLOOR, TOWER A,

PENINSULA BUSINESS PARK, GANPATRAOKADAM MARG,

LOWER PAREL, MUMBAI,

MAHARASHTRA, 400013

AND BRANCH OFFICE AT:

9TH FLOOR, VIDEOCON TOWER,

JHANDEWALAN EXTENSION BLOCK E,

DELHI- 110055

.....PETITIONER

(Through: Mr. Nachiketa Suri, Mr. Raj Kumar, Mr. Samir S. Vashishta and Ms. Suman Khatri, Advs.)

versus

1. SUMO LIFE CARE PRIVATE LIMITED.
HAVING ITS REGISTERED OFFICE AT:
35-C, FIRST FLOOR,
RAMA ROAD, NAJAFGARH ROAD
DELHI-110015



2025:DHC:3907



ALSO AT;
3/15, LOWER GROUND FLOOR,
WEST PATEL NAGAR,
DELHI-110008

2. RAJIV KUMAR DANDONA
S/O JAGDISH LAI DANDONA,
R/O H.NO. 35, GALI NO. 15,
NEAR PATEL PARK, WEST PATEL NAGAR,
DELHI-110008

ALSO AT:
HOUSE NO. 14/22, 3rd FLOOR,
EAST PATEL NAGAR,
CENTRAL DELHI-110018

3. M.P. SINGH
S/O SUNDER SINGH
R/O H. NO. 7, BLOCK- 40,
2nd FLOOR, EAST PATEL NAGAR,
DELHI-110008

.....RESPONDENTS

(Through: None.)

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the 1996 Act) by the petitioner, seeking appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties under the Loan agreement.
2. The affidavit of service filed by the petitioner reads as under:-



“1. That I am the counsel for Petitioner, well conversant with the facts of the case and having access to email address nachiketasuri.advocate@gmail.com and hence competent to swear on the present affidavit.

2. I say that the Deponent on 09.04.2025 had send the Notice along with entire set of the Petition at the email address of the Respondents i.e. sumolifecare@gmail.com and the same has been bounced back with remarks “Their inbox is full or its getting too much mail right now”. Printout of the email is annexed as **Document – P-1**.

3. That the notice along with complete set of paperbook was sent to Respondent no. 1 through speed post on 08.04.2025 at 35C, First Floor, Rama Road, Najafgarh Road, Delhi 110015 and the same has returned on 15.04.2025 having remarks “Addressee left without Instruction” . That the notice along with complete set of paperbook was sent to Respondent No.1 another address through speed post on 08.04.2025 at 3/15, Lower Ground Floor, West Patel Nagar, Delhi 110008 and the same has returned having remarks “No such person in the address 09.04.2025”. That the notice along with complete set of paperbook was sent to Respondent no. 2 through speed post on 08.04.2025 at H. No. 35, Gali No 15, Near Patel Park, West Patel Nagar, Delhi 110008 and the same has returned having remarks “No such person in the address on 09.04.2025”. That the notice along with complete set of paperbook was sent to Respondent no. 2 another address through speed post on 08.04.2025 at House No. 14/22, 3rd Floor, East Patel Nagar, Central Delhi 110018 and the same has returned having remarks “No such person in the address 09.04.2025”. That the notice along with complete set of paperbook was sent to Respondent no. 3 through speed post on 08.04.2025 at H. No. 7, Block 40, 2nd Floor, East Patel Nagar, Delhi 110008 and the same has returned having remarks “No such person in the address on 15.04.2025”. Copy of the speed post receipts are annexed as **Document P2** and Tracking Report as generated from the internet are annexed as **Document P3**.

4. That the notice along with complete set of paperbook was sent to Respondent No. 1 through approved courier on 08.04.2025 and the same has returned having remarks “No such person in the address 09.04.2025”. That the notice along with complete set of paperbook was sent to Respondent No. 1 another address through approved courier on 08.04.2025 and the same has been delivered on 10.04.2025”. That the notice along with complete set of paperbook was sent to Respondent No.2 through approved courier on 08.04.2025 and the same is in-transit/under process till date. That the notice along with complete set of paperbook was sent to Respondent No. 2 another address through approved courier on 08.04.2025 and the same has been delivered on 09.04.2025”. That the notice along with complete set of paperbook was sent to Respondent No. 3 through approved courier on 08.04.2025 and the same has been delivered on 09.04.2025. Copy of Courier Receipt is annexed as **Document P4** and tracking Report



has been annexed as **Document P5**.

5. That the affidavit is being filed in Compliance of service being done to the Respondents.”

3. Learned counsel for the petitioner further submits that the address at which service has been effected through courier is the same as the one furnished by the respondent in the loan application form, placed on record as Annexure P-5.

4. In view of the above and the fact that no one appears on behalf of the respondent despite due service, the Court proceeds to consider the prayer on merits.

5. As per the case set up by the petitioner, it appears that *vide* sanction letter dated 24.08.2019, an amount of Rs. 35,00,000/- was sanctioned to the respondent as a business loan, repayable in 36 equated monthly instalments (EMIs) of Rs. 1,29,183/- each, commencing from the 5th day of the succeeding month. Pursuant thereto, the loan agreement was duly executed between the parties. The respondents, however, committed default in repayment of the said EMIs. A legal notice was, thereafter, issued by the petitioner, but it remained without any response.

6. Therefore, in light of the continuous default, the petitioner initiated arbitration proceedings against the respondents for recovery of the outstanding dues. It is the case of the petitioner that the Sole Arbitrator proceeded to pass an *ex parte* award dated 13.03.2023. According to the petitioner, the said award is rendered a nullity in law, having been passed unilaterally and in disregard of due process. Accordingly, the petitioner has approached this Court under the present proceedings.

7. The Court takes note of Clause 9 of the Agreement, which reads as under:-



2025:DHC:3907



“9. 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 in [Mumbai/Delhi/Kolkata/Chennai] as may be decided ' by the Lender 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 pf arbitration shall be borne by the Obligors.”

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*

¹ 2024 SCC OnLine SC 1754.

² 2023 SCC OnLine SC 1666.

³ (2021) 2 SCC 1.

⁴ (2023) 9 SCC 385.



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 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

⁵ (2025) 2 SCC 192.



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”.

⁶ (2025) 2 SCC 147.



9. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, this Court is inclined to appoint a Sole Arbitrator to adjudicate upon the disputes.
10. Accordingly, Ms. Mitakshara Goyal (Mobile No.-+91 99589-66077, e-mail id: mgoyal@svarniti.com) is appointed as the sole Arbitrator.
11. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the 1996 Act.
12. The Sole Arbitrator shall be entitled to a 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.
13. The parties shall share the arbitrator's fee and arbitral cost, equally.
14. All rights and contentions of the parties in relation to the claims/counterclaims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.
15. Let a copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.
16. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

MAY 7, 2025/DPA/SP

Click here to check corrigendum, if any