



2025:DHC:3908



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

+ **ARB.P. 281/2025**

Date of Decision: **07.05.2025**

IN THE MATTER OF:

VR SURAT PRIVATE LIMITED
(EARLIER KNOWN AS DHANLAXMI INFRASTRUCTURE
PRIVATE LIMITED)

HAVING ITS REGISTERED OFFICE AT:

F.P. NO.29, VIRTUOUS RETAIL- SURAT,

NEAR DUMAS RESORT,

SURAT-DUMAS ROAD, MAGDALLA,

SURAT, GUJARAT – 395007

THROUGH ITS AUTHORISED SIGNATORY:

MR. ASIDSH PANDYA

.....PETITIONER

*(Through: Mr. Abhyudai Singh, Ms. Swati Sharma and Mr Mukund
Rawat, Advs.)*

versus

MR AMIT SINHA

PROPRIETOR OF SPA NATION

HA YING REGISTERED OFFICE AT:

S34, SECOND FLOOR, ALPHA ONE MALL,

VASTRAPUR, AHMEDABAD, GUJARAT

ALSO AT:

F-1/203, EKTA CHS LTD.,

AMBADI ROAD, DEW AN AND SONS ENCLAVE,

THANE, MAHARASHTRA- 401202

.....RESPONDENT

*(Through: Mr. Vinod Kumar, Mr. Rajeev Kumar, Ms. Alka
Srivastava and Mr. Vishal, Advs.)*



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 (1996 Act) by the petitioner, seeking the appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties under the Memorandum of Understanding dated 12.02.2016.
2. Learned counsel for the respondent has raised several objections on the merits of the matter.
3. In addition to the above, an objection has also been raised as to the maintainability of the present petition on the ground of lack of territorial jurisdiction. Drawing the attention of the Court to Clause 18.8(a) of the Lease Deed dated 09.05.2016, learned counsel for the respondent submits that the validity, construction, and performance of the said Lease Deed are to be governed and interpreted in accordance with the laws of India, and that the competent Courts would be at Surat which shall have exclusive jurisdiction in that regard. On this basis, it is contended that the petitioner ought to have approached the appropriate Courts at Surat and not this Court.
4. The aforesaid objection is controverted by learned counsel for the petitioner, who places reliance on the decision of this Court ***Cinepolis (India) (P) Ltd. v. Celebration City Projects (P) Ltd***¹. He contends that Clause 18.8(b), if considered in the right perspective, the same would clearly indicate that the parties intended to have the seat of the Arbitration at New

¹ 2020 SCC OnLine Del 301



Delhi and, therefore, this Court would have jurisdiction to appoint the Arbitrator.

5. Learned counsel for the petitioner also submits that there are three lease deeds between the parties and all three lease deeds contain similar clauses with respect to governing laws and dispute resolution.

6. I have heard learned counsel appearing for the parties and perused the record.

7. In order to appreciate the aforesaid contentions, the Court has considered clause 18.8 of the Lease Agreement, which reads as under:-

“18.8 Governing Law and Dispute Resolution-

(a) The validity, construction and performance of this Lease Deed shall be governed interpreted with laws of India with competent Courts at Surat having the exclusive jurisdiction in this regard.

(b) If any question of difference or claim or dispute shall arise between the parties hereto touching these presents or the construction thereof to rights, duties or obligations of the parties hereto or as to any matter arising out of or connected with the subject matter of these presents, the same shall be referred to the arbitration to be held at New Delhi in accordance with the provisions of the (Indian) Arbitration and Conciliation Act, 1996. The reference shall be to a sole arbitrator. If the Parties fail to appoint a sole arbitrator within 30 (Thirty) days, then the dispute shall be referred to 3 (Three) arbitrators, with each Party appointing 1 (One) arbitrator and the two arbitrators so appointed appointing the third arbitrator. The arbitrator/s shall render their award In English language and in writing. The Parties agree to abide by the decision of the arbitrator/s, which shall be final and binding.”

8. A bare perusal of Clause 18.8(b) of the Lease Deed indicates that any question with respect to difference, claim, or dispute arising between the parties, touching upon the construction of the Lease Deed or the rights, duties, or obligations of the parties pursuant thereto, shall be referred to arbitration to be *held at New Delhi* in accordance with the provisions of the 1996 Act.

9. The use of the expression “*held at New Delhi*” is of fundamental



significance. This Court, in the case of ***Cinepolis India Pvt. Ltd.*** considered a similar clause wherein the arbitration was stipulated to be “held” at a particular place, and the objection raised was that the agreement was executed at Ghaziabad and the property in question was also situated in Ghaziabad.

10. Upon considering various pronouncements of the Supreme Court and the effect of similar clauses, this Court, in the aforementioned decision, in paragraph Nos. 29 and 33 has held that where the parties agree to the place at which the arbitration proceedings are to be held, the said place assumes the character of the *seat of arbitration*. Accordingly, the Courts at such a seat would have exclusive jurisdiction while examining a petition under Section 11 of the 1996 Act.

11. Thus, notwithstanding the situs of the property or the place of execution of the agreement, once the parties have agreed to New Delhi as the venue or seat of arbitration, the jurisdiction would lie with the Courts at New Delhi. The relevant paragraphs of the said decision read as under:-

“29. What emerges therefore by reading of the various judgments referred to above is that it is really the seat of arbitration which is akin to an exclusive jurisdiction clause. Where there are no contrary provisions in the agreement, the place would be the juridical seat which would determine the territorial jurisdiction of a Court. Where the words in the arbitration clause are neither seat nor place and the arbitration clause only refers to words such as “venue” or “held in” the intent of the parties would have to be seen from the agreement. If the parties intend that the arbitration proceedings are to be held as a whole at that particular venue then the venue also becomes a juridical seat. It is also clear from the now well settled law that it is the seat or the juridical seat which will be the guiding factor for a Court to determine its jurisdiction while examining a petition under Section 11 of the Act.

30. In the case of ***Devyani International Ltd. vs. Siddhivinayak Builders & Developers*** being OMP (I) (COMM) 373/2017, decided on 27.09.2017, a Coordinate Bench of this Court was dealing with an inter-play between an Arbitration Clause and a clause relating to “Governing Law”. Relevant para of the Arbitration Clause is as under:



“22.1The seat of arbitration shall be at New Delhi”

Clause 12 which was a clause of the Governing Law read as under:-

“12.1... The Courts at Mumbai shall have the exclusive jurisdiction to entertain the dispute or suit arising out of or in relation to this agreement.

The Court relied upon the judgment of the Supreme Court in **Indus Mobile Distribution Private Limited (supra)** and held that the agreement records that the seat of Arbitration shall be at Delhi and thus the Delhi Courts will have exclusive jurisdiction to adjudicate the disputes between the parties

31. In the case of **Ramandeep Singh Taneja vs. Crown Realtech Private Ltd.** being Arb. P. 444/2017, decided on 23.11.2017, the issue of territorial jurisdiction arose on account of the fact that under Arbitration Clause 24 of the agreement between the parties, the jurisdiction of all disputes was at Delhi while the venue for arbitration proceedings was agreed to be at Faridabad, Haryana. A coordinate Bench of this Court relying on **Indus Mobile Distribution Private Limited (supra)** and **BALCO (supra)**, held that the place where the venue of arbitration was located would take precedence over the exclusive jurisdiction vested in the Courts at Delhi. The judgment of the Supreme Court in the case of **BALCO (supra)** was relied upon wherein the Supreme Court held that a distinction is to be drawn between “subject matter of the arbitration” and “subject matter of the suit”. For the purpose of identifying the Court which shall have supervisory control over the Arbitral Proceedings, it would be the Court where the “subject matter of arbitration” is situated and that would take precedence over the Court where the “subject matter of the suit” is situated.

32. The Coordinate Bench resolved the conflict between the two parts of clause 24 by holding that where the disputes are to be adjudicated without reference to arbitration, Courts at Delhi would have exclusive jurisdiction, however, where they have to be resolved through arbitration, venue being at Faridabad, Haryana, the Courts at Faridabad would have exclusive jurisdiction. The same Bench thereafter decided a petition under Section 11 of the Act titled as **Global Credit Capital Limited vs. Krrish Realty Nirman Pvt. Ltd.** being Arb. P. 123/2018, decided on 16.05.2018, where again the issue of territorial jurisdiction of this Court arose. The said case being Arb Pet. 123/2018 was decided on 16.05.2018 and allowed. The conflict was between the Arbitration Clause 24 as per which the venue of arbitration was Delhi and clause 31 of the Collaboration Agreement, which provided that “Courts at Gurgaon shall have jurisdiction of all matters concerning this agreement”. The word „venue” was construed by the Courts at „Seat” of arbitration following the judgments of the Supreme Court on the said issue. Reliance was then placed on **Indus Mobile Distribution Private Limited (supra)** and **Ramandeep Singh Taneja (supra)** and it was held that the seat of arbitration being Delhi, the Courts at Delhi would have the territorial jurisdiction to decide matters concerning arbitration



33. Thus, applying the law laid down the arbitration clause in the present case is clearly referring to a juridical seat of arbitration and since the seat is designated at New Delhi, this Court would have jurisdiction to entertain the present petition, even though cause of action may have arisen in Ghaziabad”

12. In view of the aforesaid decision, the Court is of the considered opinion that this Court has territorial jurisdiction to entertain the instant petition and to appoint the Arbitrator.

13. 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**,² 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**³ 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.**,⁴ and adopted in **NTPC Ltd. v. SPML Infra Ltd.**,⁵ 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

² 2024 SCC OnLine SC 1754.

³ 2023 SCC OnLine SC 1666.

⁴ (2021) 2 SCC 1.

⁵ (2023) 9 SCC 385.



(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.**,⁶ 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.

⁶ (2025) 2 SCC 192.



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**⁷.*

14. It is, thus, seen that if there exists a valid arbitration clause, the objections of the entitlement or otherwise on the merits of the claim can be considered by the Arbitral Tribunal.

15. Learned counsel for the parties agree that instead of appointing three arbitrators to constitute three Arbitral Tribunals, since the parties are the same and the dispute arises on account of three different lease deeds, therefore, the entire dispute is being referred to the Sole Arbitrator to adjudicate upon the disputes between the parties.

⁷ (2025) 2 SCC 147.



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16. Accordingly, Justice Ali Mohammad Magrey, Former Chief Justice of Jammu and Kashmir (Mobile No. +91- 6005509928, Email-id – Justicemagrey@gmail.com) is appointed as the sole Arbitrator.
17. 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.
18. The learned arbitrator is also requested to file the requisite disclosure under Section 12 (2) of the 1996 Act within a week of entering on reference.
19. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.
20. 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.
21. The petition stands disposed of in the aforesaid terms.

MAY 7, 2025/DPA/SP

PURUSHAINdra KUMAR KAURAV, J

Click here to check corrigendum, if any