2025:DHC:3859

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

\+ **ARB.P. 316/2025**

Date of Decision**: 06.05.2025**

**IN THE MATTER OF:**

AXIS FINANCE LIMITED .....Petitioner

Through: Mr. Manish Kumar Sharma and Mr. Vatsal Sharma, Advs.

versus

SHIWENDRA KUMAR YADAV .....Respondent

Through: Appearance not given.

**CORAM:**
**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

**JUDGEMENT**

**PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. Service affidavit filed by the petitioner reads as under:

> *"1. That I am Authorized Representative of petitioner's company and is competent to swear this affidavit.*
> *2. That the respondent have been served thru E-mail/ whatsapp / speed post and courier (all available modes) with the Notice issued by the Hon'ble High courts of Delhi and the copy of petition and its annexures filed by the petitioner's company in this Hon'ble High court of Delhi.*
> *3. That we confirm that the aforesaid Address, email Id and mobile number belongs to the accused persons as per records available with petitioner's Company."*

2. Learned counsel appearing on behalf of the petitioner submits that the courier service was duly delivered to the respondent at the

address which forms part of the agreement executed between the parties.

3. In view of the said submission and upon perusal of the record, the Court is satisfied that service upon the respondent has been duly effected.

4. The facts on record indicate that a loan agreement was executed between the parties on 28.01.2022, whereby the respondent availed a loan facility of Rs. 7,07,607/- from the petitioner.

5. The petitioner submits that the respondent failed to adhere to the repayment schedule as agreed under the loan agreement, which necessitated the issuance of a notice invoking arbitration under Section 21 of the 1996 Act. It is further submitted that despite the said notice having been issued, the respondent failed to take any steps or respond, thereby compelling the petitioner to initiate the present proceedings under Section 11 of the 1996 Act.

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

7. Clause 14 of the agreement dated 26.10.2023 reads as under:

> *"14. Arbitration*
> *(i) All disputes, differences and/or claim or questions arising out of these presents or in any way touching or concerning the same or as to constructions, meaning or effect thereof or as to the right, obligations and liabilities of the parties hereunder shall be referred to and settled by arbitration, to be held in accordance with the provisions of the Arbitration and conciliation Act, 1996 or any statutory amendments thereof, of a sole arbitrator to be nominated by the Lender, and in the event of death, unwillingness, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator' the Lender may appoint a new arbitrator to be a sole arbitrator. The arbitrator shall not be required to give any reasons for the award and the award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be held*

*Mumbai/Delhi. (ii) Notwithstanding anything to the contrary contained herein, any dispute, controversy or claim arising out of or relating to this contract, including its construction, meaning, scope or validity thereof, shall be resolved and settled by arbitration under the Arbitration and conciliation Act, 1996 (as amended) which may be administered electronically under online Dispute Resolution (ODR), in accordance with its Dispute Resolution Rules ("Rules").*

*(iii)The parties consent to carry out the aforesaid proceedings electronically via the email addresses and / or mobile numbers as per Axis Finance records, updated from time to time.*

*(iv) The parties are agree that the aforesaid proceedings shall be carried out by a sole arbitrator appointed under the Rules' The Q9 juridical seat of arbitration shall be Delhi/Mumbai, lndia and the jurisdiction of the competent courts in Delhi/Mumbai, lndia The the arbitration proceedings shall be lndian law The decision of aforesaid proceedings shall be subject to the exclusive language of arbitration shall be English. The law govern the arbitrator shall be final and binding on the parties.”*

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***

[1] 2024 SCC OnLine SC 1754.
[2] 2023 SCC OnLine SC 1666.
[3] (2021) 2 SCC 1.

***Infra Ltd.**,[4] 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.**,[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 :*

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[4] (2023) 9 SCC 385.
[5] (2025) 2 SCC 192.

*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***[6].

14. 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.

15. Accordingly, Mrs. Pusshp Gupta, Advocate (Mobile: +91-9810150907; Email: pusshpgupta@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 1996 Act within a week of entering on reference.

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. The petition stands disposed of in the aforesaid terms.

**PURUSHAINDRA KUMAR KAURAV, J**

**MAY 6, 2025/P/SP**

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[6] (2025) 2 SCC 147.