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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 377/2025**

Date of Decision: **07.08.2025**

IN THE MATTER OF:

SHRI SHEETAL DAWER

.....Petitioner

Through: Mr. Rajeev Saxena, Sr. Adv. with Ms.
Megha Saxena, Ms. Shreya Bhatnagar
and Mr. Shaurya Dahiya, Advs.

versus

M/S MODA COCKTAIL & ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. None has appeared on behalf of the respondent despite notice.
2. Service affidavit placed on record by the petitioner, reads as under:-

“Affidavit of Service

I, Megha Saxena, aged about 29 years D/o Shri Rajeev Saxena, Chamber No. 708, Lawyers Chamber Block-III, High Court, New Delhi, do hereby solemnly affirm and declare as under:-

- 1. That I am the counsel for the Petitioner in the captioned Petition, am well conversant with the facts of the case and hence, competent to swear the present affidavit.*
- 2. That the Respondents herein were served as Advance Copy of the Petition at the time of filing via email on 'srg2810@gmail.com' on 22.02.2025, which email has not bounced back, the Proof of Service whereof, alongwith the Affidavit of Service, has been placed on record.*
- 3. That in compliance of Order dated 24.04.2025 passed by this Hon'ble Court, requisite steps were taken on behalf of the Petitioner*



and accordingly, Process Fee was filed on 25.04.2025 vide Diary No. 2882658/2025.

4. That on 29.07.2025, the Ordinary Service upon the Respondent No. 1 stands effected and has been received by an office employee of Respondent No.1, namely, Sunny, at the premises of the Respondent No.1-Company.

5. That Respondent No. 2 and 3 are Directors of Respondent No. 1-Company and service qua Respondents No. 2 and 3 is still awaited.”

3. Besides the aforesaid, the office report also indicates that service has been effected on respondents. Despite the service, no one has appeared for them.

4. The case of the petitioner seems to be that they have supplied certain material to the respondent, which is supported by invoices. The payments thereto has allegedly not been made by the respondent.

5. It is further seen that the said invoices contain an arbitration clause. The arbitration clause, along with the other conditions, in the invoices is extracted as under:-

“1. Interest will be charged @ 24% after 7 days on total outstandings.

2. All disputes are to be decided by Delhi Hindustani Mercantile Association (Regd.) Delhi, as per its 'Rules & Regulations' as well as under 'Arbitration & Conciliation Act' and their (DHMA) award will be final & binding upon both parties.

3. Goods once sold will not be taken back.

4. No responsibility after dyeing/ bleaching.

5. Complaints if any will be entertained within 48 Hours and not beyond.”

6. Mr. Rajeev Saxena, learned senior counsel appearing for the petitioner, submits that earlier, the matter was referred to the Delhi Hindustani Mercantile Association (Regd.) Chandni Chowk, Delhi, and an award dated 12.08.2022 was passed, however, the aforesaid award is unenforceable in law. Therefore, the petitioner has filed the instant petition under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of the arbitrator.



7. He submits that, as per the clause in the invoices, *vide* legal notice dated 04.05.2023, the respondents were called upon to make the payment of the outstanding amount on account of the cost of the material as well as of the applicable interest. However, the same has not been paid; therefore, the instant petition has been filed.

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.

9. 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 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*

¹ 2024 SCC OnLine SC 1754

² 2023 SCC OnLine SC 1666.

³ (2021) 2 SCC 1.

⁴ (2023) 9 SCC 385.



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 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

⁵ (2025) 2 SCC 192



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.*

10. 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 an Arbitrator to adjudicate upon the disputes between the parties. Accordingly, Mr. Aviral Kumar Mishra, Advocate (mobile:-+91-



7985026059; Email:- *adv.aviralmishra03@gmail.com*) is appointed as the sole Arbitrator.

11. 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.

12. The learned arbitrator is also requested to file the requisite disclosure under Section 12 (2) of the Act within a week of entering on reference.

13. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.

14. 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.

15. 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.

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

17. Accordingly, the instant petition stands disposed of.

PURUSHAINdra KUMAR KAURAV, J

AUGUST 7, 2025/P/SP

⁶ (2025) 2 SCC 147.