



2025:DHC:3413



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

+ **ARB.P. 448/2025**

Date of Decision: **28.04.2025**

IN THE MATTER OF:

SMT. ANITA BHARDWAJ THROUGH HER ATTORNEY MS.
RAKHI BHARDWAJ PETITIONER

Through: Mr. N.S. Dalal, Ms.Nidhi Dalal, Mr.
Alok Kumar, Ms.Rachna Dalal and
Mr.Karan Mann, Advocates.

Versus

M/S. AIRCEL COMPANY THROUGH ITS MANAGING
DIRECTOR & ANR. RESPONDENTS

Through: Mr. Ankit Kumar, Advocate.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Section 11(6) 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 License Agreement dated 21.02.2009.
2. Learned counsel for the petitioner submits that the late husband of the



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petitioner was the absolute owner and in possession of property bearing No. 6/207, Sundar Vihar, New Delhi – 110087. Upon the demise of the husband of the petitioner on 09.01.2019, it is submitted that the ownership of the property devolved equally upon the petitioner and her two daughters, namely, Ms. Rakhi Bhardwaj and Ms. Ridhi Bhardwaj. Subsequently, both daughters executed a relinquishment deed, thereby relinquishing their respective one-third shares in favour of the petitioner herein, who thus became the sole owner of the subject property.

3. Owing to the advanced age of the petitioner and allied health concerns, it is submitted that the petitioner has executed a Power of Attorney authorising her daughter, Ms. Rakhi Bhardwaj, to represent her in all legal proceedings pertaining to the present dispute.

4. It is submitted that the respondents had approached the late husband of the petitioner with a proposal to lease a portion measuring 850 sq. ft. on the second floor (roof of the first floor) of the subject property for the installation of a mobile tower. The said proposal was accepted, and accordingly, a License Agreement was executed on 21.02.2009 between the petitioner and the respondents. As per the terms of the agreement, the respondents undertook to pay a monthly license fee of Rs. 15,000/-, with a 10% escalation every five years to the last paid license fee.

5. Learned counsel further submits that the respondents have failed to make payment of the license fee as agreed, resulting in accumulation of arrears. In view of such persistent default, the petitioner served a legal notice dated 10.07.2024 upon the respondents, calling upon them to clear the



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outstanding dues and to remove the installed mobile tower from the premises. Despite issuance of the said notice, no payment was made, nor was the tower removed. Consequently, the petitioner was constrained to invoke the arbitration clause and issued a separate notice seeking appointment of an arbitrator in terms of the agreement.

6. It is submitted that Clause 11 of the License Agreement dated 21.02.2009 stipulates that any disputes between the parties shall first be attempted to be resolved amicably, failing which the same shall be referred to arbitration in accordance with the provisions of the 1996 Act. As no amicable resolution was reached and the respondents failed to appoint an arbitrator within the stipulated time, the present petition under Section 11(6) of the Act has been preferred seeking appointment of a Sole Arbitrator.

7. On notice being issued, the respondents are represented by Mr. Ankit Kumar, Advocate. He fairly submits that he does not have any objection to the prayer made herein, subject to reserving his rights and contentions.

8. Heard learned counsel appearing on behalf of the parties.

9. The Court takes note of the Clause 11 of the License Agreement dated 21.02.2009, which reads as under:-

“11. DISPUTE RESOLUTION AND APPLICABLE LAWS

In the event of any dispute arising by and between the parties hereto, the same shall be amicably resolved by Conciliation, failing which, by Arbitration conducted by a sole arbitrator duly nominated by the Licensee, in accordance with the provisions of the Arbitration & Conciliation Act, 1996 (as amended) and in case of death refusal neglect or incapability of the appointed arbitrator to act as an Arbitrator then



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the same shall be referred to the Sole Arbitrator to be appointed by the Licensee, whose decision shall be binding upon both the parties. The venue of the Arbitration shall be Delhi. The decision of the arbitrator shall be final and binding on the parties. All disputes shall be subject to the jurisdiction of Delhi courts. The governing law shall be laws of India.”

10. 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 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.



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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

⁵ (2025) 2 SCC 192.



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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.



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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 an Arbitrator to adjudicate upon the disputes between the parties.
10. Accordingly, Mr. Sunny Choudhary (mobile: 9911706606; e-mail: sunnyswaroop@yahoo.co.in) 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. The petition stands disposed of in the aforesaid terms.

APRIL 28, 2025
Nc/sp

PURUSHAINDR KUMAR KAURAV, J

Click here to check corrigendum, if any