



2025:DHC:3434



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

+ **ARB.P. 543/2025**

Date of Decision: **28.04.2025**

IN THE MATTER OF:

BHASIN CONSTRUCTION THROUGH ITS PARTNER SHRI
TARUNJOT SINGH

..... PETITIONER

Through: Mr. K.C. Tripathi, Advocate.

Versus

UNION OF INDIA & ORS.

.... RESPONDENTS

Through: Ms. Aakanksha Kaul, Mr. Aman
Sahani and Ms. Ashima Chopra,
Advocates.

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 Terms of Arbitration Clause 70 of General Terms and Conditions of Contract I.A.F.W-2249.



2. Learned counsel for the petitioner submits that the petitioner is a registered contractor, and has been engaged by the respondents on multiple occasions for the execution of various civil and construction works. He submits that the Respondent No.1 is the Union of India through the Engineer-in-Chief (E-in-C), Military Engineer Services (MES), which is the authority responsible for the execution of infrastructure works for the Indian Army. Respondents Nos. 2 to 4 are subordinate offices functioning under Respondent No.1, and are responsible for administration and execution of works under the supervision and control of Respondent No.1, including for the appointment of an Arbitrator under the 1996 Act.

3. Learned counsel submits that the tender of the petitioner was accepted by the respondents, and a formal agreement was executed between the parties on 26.02.2021 for a total contract value of Rs. 39,45,380/-. The petitioner, *vide* letter dated 14.04.2021, requested the respondents to provide necessary drawings to enable the commencement of work, and simultaneously sought an extension of time owing to the lockdown imposed in Delhi from 06.04.2021 to 30.04.2021 due to the second wave of COVID-19. However, despite repeated representations, the respondents failed to hand over the site or provide the requisite drawings and design mix, thereby committing a breach of the terms and conditions of the contract.

4. It is further submitted that *vide* letter dated 12.04.2021, the respondent issued a communication threatening cancellation of the contract, even though the impediments to commencement of work were entirely attributable to their inaction. Thereafter, *vide* letter dated 08.06.2021, the



petitioner reiterated the request for issuance of drawing, design mix (M-25), and approval of samples, noting the further complications arising due to lockdown restrictions and reverse migration of labour. Despite these representations, no remedial steps were taken by the respondents.

5. The petitioner further states that the work order dated 26.02.2021 could not be executed due to failure on part of the respondents in handing over the site, granting sample approvals, providing storage space for labour, and issuing drawings. It is also alleged that the drawings which were eventually furnished were defective, and the subordinate offices of the respondent were aware of this defectiveness and hence withheld the same. The contract itself, being a repair contract, had certain anomalies, such as the inclusion of a disproportionately large quantity of steel in the BOQ, which rendered execution unfeasible.

6. In light of the above, the petitioner, issued a notice under Condition 71 of the General Conditions of Contract (IAFW-2249) seeking amicable resolution of the dispute and raised the following claims:-

- (i) Risk and cost claim in the event of contract cancellation – Rs. 3,90,000/-
- (ii) Performance security amount – Rs. 1,19,000/-
- (iii) Loss of profits – Rs. 10,00,000/-
- (iv) Interest at the rate of 12% on the withheld amount
- (v) Litigation expenses – Rs. 1,50,000/-

7. It is submitted that despite service of notice under Condition 71, the respondents failed to respond or initiate amicable resolution. Consequently, the petitioner issued a further notice under Condition 70 of IAFW-2249



seeking appointment of a Sole Arbitrator within the prescribed period of 30 days. However, no arbitrator was appointed. Accordingly, learned counsel submits that the respondents have, by their inaction, forfeited their right to appoint an arbitrator. He submits that the total value of the claims raised is approximately Rs. 15,00,000/-.

8. Heard learned counsel appearing on behalf of the petitioner.
9. The Court takes note of the Clause 70 General Terms and Conditions of Contract I.A.F.W-2249, which reads as under:-

“70. Arbitration.- All disputes, between the parties to the Contract(other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer officer to be appointed by the authority mentioned in the tender documents. Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Work or termination or determination of the Contract under Condition Nos. 55, 56 and 57 hereof. Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos. 52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the Works completed by or through any other Contractor or Contractors or Agency or Agencies. Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in Condition 67 hereof. If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place. The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence. The Arbitrator may proceed with the arbitration, exparte, if either party, inspite of a notice from the Arbitrator fails to take part in the proceedings. The Arbitrator may, from time to time with the consent of the parties, enlarge, the time upto but not exceeding one year from the date of his entering on



the reference, for making and publishing the award. The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute. The venue of Arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion. The award of the Arbitrator shall be final and binding on both parties to the Contract.”

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:-*

¹ 2024 SCC OnLine SC 1754.

² 2023 SCC OnLine SC 1666.

³ (2021) 2 SCC 1.

⁴ (2023) 9 SCC 385.



“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 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.

⁵ (2025) 2 SCC 192.



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.



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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, Mrs. Megha Saxena (*Mobile +91-9654777505; e-mail: meghasaxena.ms2010@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. The petition stands disposed of in the aforesaid terms.

PURUSHAINDRA KUMAR KAURAV, J

APRIL 28, 2025

Nc/sp

Click here to check corrigendum, if any