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

+ **ARB.P. 570/2025**

Date of Decision: **05.05.2025**

IN THE MATTER OF:

AXIS FINANCE LIMITED
HAVING BRANCH OFFICE AT
85-A, 1st & 2nd FLOOR,
RISHYAMOOK BUILDING, PANCHKUIAN ROAD,
NEW DELHI - 110001

..... PETITIONER

Through: Mr.Ankush Bhardwaj and Mr.Shikhar
Gupta, Advocates.

Versus

HITESH BIPINBHAI PATEL
6 PRAYOSHAHOMES, PLOTNOH-3066/10
NEARGOLDEN POINTBHARUCH
Gujarat 393002
MOB: 9687688218

.... RESPONDENTNO.1

JIMY RAMESHBHAI PATEL (CO-BORROWER)
6 PRAYOSHAHOMES, PLOTNOH-3Q66/ 10
NEARGOLDEN POINTBHARUCH
Gujarat 393002
MOB: 9825194007

.... RESPONDENTNO.2

Through: None.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been instituted under Section 11(6) of the



Arbitration and Conciliation Act, 1996 (the 1996 Act), wherein the petitioner seeks appointment of an Arbitrator for adjudication of disputes arising out of the Loan Agreement dated 22.10.2022 executed between the parties.

2. Learned counsel for the petitioner, while referring to the affidavit of service, submits that the respondents have been duly served through speed post as well as electronic mail. It is contended that the email addresses at which service was effected are those specifically mentioned in the Loan Agreement itself.

3. Upon perusal of the affidavit of service, this Court is satisfied that the respondents have been duly served. However, despite service, there is no appearance on behalf of the respondents. Accordingly, the Court proceeds to deal with the prayer.

4. The facts, as pleaded, indicate that the petitioner is a registered Non-Banking Financial Institution (NBFI) under the regulatory framework of the Reserve Bank of India, engaged in the business of extending financial assistance by way of loans and credit facilities. The respondents, having availed a personal loan from the petitioner, entered into a Loan Agreement dated 22.10.2022 for a sanctioned amount of INR 34,69,893/-.

5. In terms of the said agreement, the respondents were contractually obligated to repay the loan amount in equated monthly instalments over a period of 84 months.

6. Learned counsel for the petitioner further submits that the respondents



committed persistent defaults in repayment, as a result of which the account was classified as a Non-Performing Asset (NPA). A loan recall notice dated 21.10.2024 was issued demanding payment of INR 29,12,135/-. Upon continued failure to regularise the account, a legal notice dated 19.02.2025 was issued invoking the arbitration clause, calling upon the respondents to make payment of INR 28,53,764/- along with interest pendente lite, within a period of thirty days.

7. The Court takes note of Clause 14 of the Loan Agreement dated 22.10.2022, which 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 agree that the aforesaid proceedings shall be carried out by a sole arbitrator appointed under the Rules. The juridical seat of



arbitration shall be Delhi/Mumbai, India and the aforesaid proceedings shall be subject to the exclusive jurisdiction of the competent courts in Delhi/Mumbai, India. The language of arbitration shall be English. The law governing the arbitration proceedings shall be Indian law. The decision of 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 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

¹ 2024 SCC OnLine SC 1754.

² 2023 SCC OnLine SC 1666.

³ (2021) 2 SCC 1.

⁴ (2023) 9 SCC 385.



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 arbitration agreement to participate in a time consuming and costly arbitration process. This is possible in instances, including

⁵ (2025) 2 SCC 192.



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.”*

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 a Sole Arbitrator to adjudicate upon the disputes.

10. Accordingly, Mr. Rajul Shrivastava, Advocate (Mob No:-



09891860220 Email:- advrajul@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 1996 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.

PURUSHAINDR KUMAR KAURAV, J

MAY 5, 2025

Nc/sp

Click here to check corrigendum, if any

⁶ (2025) 2 SCC 147.