



2025:DHC:4032



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 602/2025**Date of Decision: **08.05.2025****IN THE MATTER OF:**

M/S HAMDARD LABORATORIES (INDIA)

.....Petitioner

Through: Mr. S. Gowthaman and Mr. Sameer
Aslam, Advocates.

versus

M/S. SUNRISE AGRILAND DEVELOPMENT AND RESEARCH
PVT. LTD. & ANR.

.....Respondent

Through: Mr. Munish Kumar, Advocate.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The facts of the case indicates that the petitioner is *Hamdard Laboratories India (Food Division)*, having its principal place of business at M-38/1, Middle Circle, Connaught Place, New Delhi – 110001 (hereinafter referred to as “the Petitioner”). The petitioner is engaged in the manufacture and sale of food and health products. The respondent, *M/s Sunrise Agriland Development & Research Pvt. Ltd.*, is a private limited company having its registered office at J-890, Sitapura Industrial Area, Tonk Road, Jaipur, Rajasthan – 302022 (hereinafter referred to as “the Respondent”). The



respondent represented itself as being in the business of manufacturing and packaging fruit juices

2. The petitioner states that, based on such representations, the parties initially entered into an understanding, which later materialized into a *Memorandum of Understanding* (MoU) and subsequent Purchase Orders. The petitioner submits that these documents form the basis of the contractual relationship between the parties and contain binding obligations on both sides. Pursuant to the MoU, the petitioner advanced amounts to the respondent to enable it to deliver the goods in a timely manner. However, the respondent consistently failed to adhere to the timelines and continued to hold advances paid by the petitioner without rendering corresponding deliveries. Due to these recurring delays, the petitioner began requesting detailed statements of account from June 2023 onwards.

3. The petitioner further submits that one such order included a consignment of *Karela Jamun Juice*. A Purchase Order bearing No. POF/OKHDF/2122/00067 was issued by the petitioner on 7th March 2022 for supply of the said products. Against this order, the petitioner made an advance payment of Rs. 26,30,767/- (Rupees Twenty-Six Lakh Thirty Thousand Seven Hundred and Sixty-Seven only). While this specific transaction was later cancelled and settled between the parties around September 2022, the respondent has nonetheless raised an inflated and arbitrary claim of Rs. 57,61,261/- by way of legal notice.

4. The petitioner contends that despite this, it made sincere efforts to amicably resolve the matter in order to protect its goodwill and business



reputation. However, the respondent not only failed to honor its obligations under the MoU but has also sought to initiate coercive legal action including the threat of criminal proceedings, which, according to the petitioner, amounts to harassment and constitutes a breach of trust and contract.

5. It is the further case of the petitioner that the MoU executed on 25th May 2022 clearly provided for resolution of disputes through arbitration. The petitioner has demonstrated that an amount of Rs.20,63,581.52/- (Rupees Twenty Lakh Sixty-Three Thousand Five Hundred Eighty-One and Fifty-Two Paise only) remains recoverable from the respondent as on date, being part of the advance paid and not adjusted against any valid supply. The petitioner also states that, as per the arrangement, goods were to be supplied by the respondent upon receipt of advances. However, the respondent has failed to provide adequate proof of having made such deliveries or fulfilled the contractual terms. The failure to perform under the MoU, despite receiving advances, amounts to a material breach. Subsequently, the instant petition was filed.

6. Clause 28 of the Memorandum of Understanding dated 25.05.2022 reads as under:

“28. DISPUTE RESOLUTION AND JURISDICTION:

i. Any dispute including any question regarding its existence, validity or termination between the Parties arising out of or related to this 'MOU' shall be brought in the knowledge of senior management of the parties concerned with aim to resolve the dispute within 15 days of written notice by either parties for amicable solution of the dispute.

ii. In case party failed to resolve the issue within 15 days statutory period arises between the Parties out of or in connection with this 'MOU'



whether in the nature of interpretation or meaning of any term hereof or as to any claim by one against the other, or otherwise the same shall be referred to sole arbitrator to be appointed as per the Arbitration and Conciliation Act, 1996 (As amended upto date) and the arbitration shall be governed by the Arbitration and Conciliation Act, 1996 and its amendment thereto.

iii. The seat or venue of arbitration shall be New Delhi only and the Court of Law at New Delhi shall have alone jurisdiction over the subject matter.

iv. The language to be used in the arbitral proceedings shall be English. The award given by the Arbitrator upon such references shall be final and binding upon the Parties, and each party shall bear its own expenses in relation to such arbitration except the cost of expenses of Arbitrator shall be borne by both the parties equally i.e. 50% each unless otherwise awarded by the arbitrator.

v. It is further agreed between the parties that such arbitration proceeding shall be completed within 6 months from the date of reference to parties.

vi. This 'MOU' shall be subject to Indian Laws and the courts of Delhi shall have jurisdiction to decide any matter or dispute arising out of this 'MOU' between the Parties."

7. 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***

¹ 2024 SCC OnLine SC 1754.



between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re² 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 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

² 2023 SCC OnLine SC 1666.

³ (2021) 2 SCC 1.

⁴ (2023) 9 SCC 385.

⁵ (2025) 2 SCC 192.



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 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 an Arbitrator to adjudicate upon the disputes between the parties.

10. The Court appoints Mr. Abhishek Mahajan , Advocate (Mobile No:+91 9810981062, Email: officeofabhishekmahajan@gmail.com) as the Sole Arbitrator to adjudicate the dispute between the parties.

11. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the the 1996 Act.

12. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

⁶ (2025) 2 SCC 147.



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13. The parties shall share the arbitrator's fee and arbitral cost, equally.
14. All rights and contentions of the parties in relation to the claims/counterclaims are kept open, to be decided by the Sole 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. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.
16. Accordingly, the instant petition stands disposed of.

MAY 08, 2025
ssc/sph

PURUSHAINDRA KUMAR KAURAV, J

Click here to check corrigendum, if any