



2025:DHC:7069



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

+ **ARB.P. 766/2025**

Date of Decision: **12.08.2025**

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, Mr.Shikhar
Gupta, Mr.Vishal Yadav, Advocates.

Versus

NUTHAN PEREIRA (BORROWER)
C/O PASKL PEREIRA NALLURU ROAD,
BEHIND INDIAN GAS, CHICKMAGALUR
KARNATAKA 577101

ALSO AT: B PLAZA SITE NO 205 14TH A MAIN,
HSR LAYOUT 4TH SECTOR, BANGLORE,
KARNATAKA, 560102

.... RESPONDENT

Through: None.

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 Loan Agreement dated 21.07.2023.

2. Learned counsel for the petitioner has placed on record the service affidavit which reads as under:-

“AFFIDAVIT OF SERVICE

AFFIDAVIT OF SERVICE OF SHIKHAR GUPTA, S/O SH. MAHESH GUPTA, AGED ABOUT 30 YEARS, HAVING OFFICE AT 16, 2ND FLOOR, WAZIRPUR INDUSTRIAL AREA, DELHI - 1110052.

I do hereby solemnly affirm and declare as under:

- 1. That I am the Counsel for the Petitioner in the captioned matter and hence, I am competent to swear the present Affidavit.*
- 2. That the accompanying Petition being filed online through E-filing before this Hon'ble Court on May 16, 2025.*
- 3. That the copy of the said Petition has been duly served upon the Respondents on their email ID i.e. nuthan 1988@gmail.com on May 15, 2025 from my email address office@advsglegal.in.*
- 4. I state that the said email was delivered and has not bounced or received back as undelivered. Copy of the said email is enclosed herewith.”*

3. Learned counsel for the petitioner submits that the email address on which the notice was sent forms part of the agreement. In view of the above, it is noted that despite proper service, no one has appeared on behalf of the respondent to contest the petition.

4. The facts of the case indicate that the petitioner is a non-banking



financial institution engaged in providing loan and credit facilities. As per the petitioner's case, it sanctioned a loan facility of Rs. 25,21,122/- to the respondent, with repayment agreed to be made by monthly installments on or before the 5th of each month for a period of 60 months. Accordingly, a Loan Agreement dated 21.07.2023 was executed between the parties. Subsequently, it is alleged that the respondent defaulted on the monthly installments and failed to adhere to the agreed repayment schedule. Despite reminders and efforts by the petitioner, the respondent failed to make payments and did not respond to multiple reminders.

5. Consequently, the petitioner issued a Loan Recall Notice dated 22.05.2024 to the respondent, demanding an amount of Rs. 24,44,413/- as of that date. Thereafter, the petitioner claims to have issued a Legal Notice dated 14.04.2025, invoking the arbitration clause (Clause 14) of the Loan Agreement dated 21.07.2023, seeking the appointment of a sole arbitrator.

6. The Court takes note of Clause 14 of the Loan Agreement dated 21.07.2023, 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.”

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 the 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

¹ 2024 SCC OnLine SC 1754

² 2023 SCC OnLine SC 1666.



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 proceedings, has held that the Arbitral Tribunal eventually may direct

³ (2021) 2 SCC 1.

⁴ (2023) 9 SCC 385.

⁵ (2025) 2 SCC 192



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 same.

10. Accordingly, Mr. Aabhas Kshetarpal (Mobile No.+91 9873256682, e-mail id:- aabhas@akchambers.in) is appointed as the sole Arbitrator.

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

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

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/counter claims are kept open, to be decided by the Sole Arbitrator on

⁶ (2025) 2 SCC 147.



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their merits, in accordance with law.

15. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy. All rights and contentions of the parties in this regard are reserved. Let the copy of the said order be sent to the appointed Arbitrator through the electronic mode as well.

16. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 12, 2025

Nc/sph