



2025:DHC:7750



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

+ **ARB.P. 900/2025**

Date of Decision: **19.08.2025**

IN THE MATTER OF:

**BASU DEV ROUT SANITATION
THROUGH MR. BASU DEV ROUT,
RZ-16/2, GALI NO. 32,
MANGAL BAZAR GALI,
INDIRA PARK PALAM COLONY,
NEW DELHI-110045**

.....Petitioner

Through: Mr. P. S. Sridhar Raj, Mr. Abhishek
Pandey and Ms. Sharmila Linka,
Adv.

versus

**IIT DELHI
THROUGH ITS DIRECTOR,
IIT DELHI, HAUZ KHAS,
NEW DELHI-110016**

.....Respondent

Through: Mr. Arjun Mitra, Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the Act) by the petitioner, seeking appointment of an Arbitrator to adjudicate upon the disputes that have arisen between the parties.

2. The facts of the case would indicate that the petitioner was awarded



the work of 'repair and maintenance of Ultra Microhydal Lab-CRDT in Micro model including providing and fixing of new steels shed in Academic area at IIT Delhi' in terms of the Notice Inviting Tender (*NIT*) dated 19.06.2023 bearing NIT no. 04/IITD/NIT/EE/(CD-IV)/2023-24.

3. As per the case set up by the petitioner, after inspection of the site, it became aware that the estimated cost of the work was highly undervalued in the tender. The petitioner claims to have requested the respondent to issue the Structural Design Plan along with a revised estimation.

4. Learned counsel appearing for the petitioner submits that there was a delay on the part of the respondent in issuing the necessary documents for continuation of the work, and the petitioner had to suffer loss of profits as well as losses on account of idle labour. It is also stated that the respondent also failed to release payment on the first running bill submitted by the petitioner despite several reminders.

5. The petitioner, therefore, has invoked arbitration Clause 25 of the General Conditions of Contract (*GCC*).

6. On notice being issued, Mr. Arjun Mitra, learned counsel appears on behalf of the respondent and contends that as per his instructions, the arbitration agreement applicable in the present dispute is contained in General Conditions of Contract, 2020 for maintenance work issued by CPWD. He submits that the arbitration clauses in the said document are slightly different from the clause being relied on herein, and that the clause which has been relied on by the petitioner is not applicable.

7. He, further, contends that even if clause 25 of the *GCC* which has been relied on by the petitioner is considered in right perspective, it would indicate that the competent authority for appointment of the arbitrator is the



Director at the respondent-institution, and in case he does not do so, no arbitration can take place.

8. I have considered learned counsel appearing for the parties and have perused the record.

9. Clause 25 of the agreement which has been relied on by the petitioner, is extracted as under:

“Settlement of disputes & Arbitration

Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, design, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:-

(i) *If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Institute Engineer in writing for written instruction or decision. Thereupon, the Institute Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.*

If the Institute Engineer fails to give his instructions or decision within a period of one month from the receipt of the contractor is dissatisfied with the instructions or decision of the Institute Engineer, the contractor may, within 15 days of the receipt of institute Engineer's decision, appeal to the Director IIT Delhi shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Director IIT Delhi shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with this decision, the contractor shall within a period of 30 days from receipt of the decision, give notice to the Director IIT Delhi for appointment of arbitrator on prescribed proforma as per Appendix XV, (x) failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.



(ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above' disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Director IIT Delhi, in charge of the works. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator

shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Director IIT Delhi of the appeal.

It is also a term of this contract .that no person, other than a person appointed by such Director IIT Delhi as aforesaid, should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any-claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the IIT Delhi shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

It is also a term of the Contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties



calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any be whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.”

10. A bare reading of the said clause would indicate that disputes relating to claims, etc., are amenable to be adjudicated by the arbitrator.
11. Moreover, the clause on which Mr. Mitra places reliance, being clause 25.2 of the General Conditions of Contract, 2020 also envisages arbitration mechanism for resolution of disputes.
12. So far as the contentions of Mr. Mitra with respect to appointment of the arbitrator by the Director is concerned, in view of the decision of the Supreme Court in the case of **Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd.**¹ there cannot be any appointment of the arbitrator by the Director. Paragraph no. 21 of the said decision is extracted below, for reference:

*“21. But, in our view that has to be the logical deduction from **TRF Limited.**² Paragraph 50 of the decision shows that this Court was concerned with the issue, “whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an Arbitrator” The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different*

¹ (2020) 20 SCC 760

² (2017) 8 SCC 377



*situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (Act 3 of 2016) and recognised by the decision of this Court in **TRF Limited**”*

13. A comprehensive reading of the clauses which has been placed reliance on by both parties clearly indicates that the parties had made an arrangement for resolution of the dispute by way of arbitration.

14. In view of the aforesaid circumstances, the Court deems it appropriate to appoint an Arbitrator. As to whether the clause which has been placed reliance on by the petitioner or the clause contained in the General Conditions of Contract, 2020 will have application in respect of the instant dispute can also be considered by the Arbitrator. However, in considered opinion of the Court, both clauses seem to envisage resolution of disputes through arbitration.

15. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the Act has been fairly well settled. This Court in **Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd**³, as well, has extensively dealt with the scope of interference at the stage of Section 11. Furthermore, this Court, recently, in **Axis Finance Limited Vs. Mr. Agam Ishwar Trimbak**⁴ has held that the scope of inquiry under Section 11 of the Act has been limited to a *prima facie* examination of the *existence*

³ 2025 SCC OnLine Del 3022

⁴ 2025:DHC:7477



of an arbitration agreement. Further, it was also reiterated that the Objections relating to the arbitrability of disputes are not to be entertained by a referral Court acting under Section 8 or 11 of the Act. The relevant extract of the aforesaid decision reads as under: -

19. In In Re: Interplay, the Supreme Court confined the analysis under Section 11 of the Act to the existence of an arbitration agreement and under Section 8 of the Act to the existence and validity of an arbitration agreement. Under both the provisions, examination was to be made at the touchstone of Section 7 of the Act. Further, issues pertaining to the arbitrability of the dispute fell outside the scope of both Section 11(6A) and Section 8 of the Act. The material part of the judgement of the Supreme Court in In Re: Interplay reads as under:

164. The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. Where Section 8 requires the referral Court to look into the prima facie existence of a valid arbitration agreement. Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement. Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration Act allows an appeal from the order of an arbitral tribunal refusing to refer the parties to arbitration under Section 8, but not from Section 11. Thus, the 2015 Amendment Act has legislatively overruled the dictum of Patel Engineering (supra) where it was held that Section 8 and Section 11 are complementary in nature. Accordingly, the two provisions cannot be read as laying down a similar standard. 165. The legislature confined the scope of reference under Section 11(6A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In Duro Felguera (supra), this Court held that the referral Courts only need to consider one aspect to determine the existence of an arbitration agreement – whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.



Therefore, the scope of examination under Section 11(6A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by arbitral tribunal under Section 16. We accordingly clarify the position of law laid down in *Vidya Drolia* (supra) in the context of Section 8 and Section 11 of the Arbitration Act, 1996. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the referral Court. The referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the arbitral tribunal. This position of law can also be gauged from the plain language of the statute. 166. Section 11(6A) uses the expression “examination of the existence of an arbitration agreement.” The purport of using the word “examination” connotes that the legislature intends that the referral Court has to inspect or scrutinize the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression “examination” does not connote or imply a laborious or contested inquiry. On the other hand, Section 16 provides that the arbitral tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the referral Court is only required to examine the existence of arbitration agreements, whereas the arbitral tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*” [Emphasis supplied]

20. The effect of *In Re: Interplay* was further explained by a Three Judge Bench of the Supreme Court in *SBI General Insurance Co. Ltd. v. Krish*



Spinning⁵ wherein the Court declared Vidya Drolia and NTPC Ltd.'s findings qua scope of inquiry under Section 8 and Section 11 of the Act to no longer be compatible with modern principles of arbitration. The material portions of the judgement read 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). ... 118. Tests like the “eye of the needle” and “ex-facie meritless”, although try to minimise the extent of judicial interference, yet they require the referral Court to examine contested facts and appreciate prima facie evidence (however limited the scope of enquiry may be) and thus are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal.” [Emphasis supplied]

21. Similarly, in BGM and M-RPL-JMCT (JV) v. Eastern Coalfields Ltd⁶ the Supreme Court succinctly explained the effect of In Re: Interplay on a Referral Court's powers under Section 11 of the Act. The relevant part of the judgement is as under:

15. ...

(a) Section 11 confines the Court's jurisdiction to the examination regarding the existence of an arbitration agreement.

(b) The use of the term “examination” in itself connotes that the scope of the power is limited to a prima facie determination.

(c) Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Such a legal approach will help the Referral Court in weeding

⁵ 2024 SCC OnLine SC 1754

⁶ 2025 SCC OnLine SC 1471



out prima facie non-existent arbitration agreements.

(d) The purport of using the word “examination” connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. However, the expression “examination” does not connote or imply a laborious or contested inquiry.

(e) The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. Only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal.

(f) Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, when the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award is bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth.

[Emphasis supplied]

22. Thus from the above-mentioned authorities it is clear that a Court’s scope of inquiry under Section 11 of the Act has been limited to a prima facie examination of the existence of an arbitration agreement while the adjudication under Section 8 is to be made for both existence and validity. Further, the examination so undertaken under both the said provisions must be within the confines of Section 7 of the Act. Objections relating to arbitrability of disputes are not to be entertained by a referral Court acting under Section 8 or 11 of the Act.”

9. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, this Court appoints Ms. Richa Khare (Mobile No + 91 9930478002, e-mail id: richa.khare40@gmail.com)



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as the sole Arbitrator.

10. 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.

11. 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.

12. The Registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.

13. 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.

14. 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 a copy of the said order be sent to the Arbitrator through electronic mode as well.

15. Petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J
AUGUST 19, 2025/P/AMG