



2025:DHC:4218



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

+ **ARB.P. 1096/2024**

Date of Decision: 13.05.2025

IN THE MATTER OF:

EXTRAMARKS EDUCATION INDIA PVT LTD

THROUGH ITS AUTHORIZED REPRESENTATIVE:

MR. JAVED ANSARI,

HAVING ITS REGISTERED OFFICE AT:

506, SURYA KIRAN BUILDING, 19 K.G. MARG,
CONNAUGHT PLACE, NEW DELHI- 110001

CORPORATE OFFICE AT:-

09TH TO 14TH FLOOR, URMILA BUSINESS PARK,

A- 95B, SECTOR- 136, NOIDA,

GAUTAM BUDH NAGAR, UTTAR PRADESH-201304

.....Petitioner

(Through: Mr. Zeeshan Hashmi, Mr. Ankit Parashar and Ms. Mitali Yadav and Mr. Saurav Sapra, Advs.)

versus

JAY JALARAM EDUCATION TRUST

THROUGH ITS

TRUSTEE/CHAIRMAN/SECRETARY/AUTHORISED
SIGNATORY,

ANAND-BORIAVI ROAD, NEAR SK CINEMA,

BORIAVI, DISTRICT, ANAND, GUJARAT-38731 0

ALSO AT:-

SHIVALYA BALASINOR HIGHWAY, POST

MAINPURA, PADAL, KHEDA,

GALTESHWAR, GUJARAT-388235

....Respondent No.1



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JAY JALARAM INTERNATIONAL SCHOOL
THROUGH ITS PRINCIPAL/ AUTHORISED
REPRESENTATIVE,
SEVALIA-BALASINOR HIGHWAY ROAD,
NR. THERMAL POWER STATION CHOKDI, AT-PADAL.
TA-THASRA, DIST: KHEDA,
GUJARAT-388235

....Respondent No.2

TAKSHASHILA VIDYALAYA
THROUGH ITS PRINCIPAL/ AUTHORISED
REPRESENTATIVE,
SEVALIA-BALASINOR HIGHWAY ROAD,
AT-PADAL, PO-MENPURA, TA-THASRA,
GUJARAT-388235

Also At:-

ANAND-BORIAVI ROAD, BORIAVI,
GUJRAT-388001

....Respondent No.3

JAY JALARAM SCHOOL
THROUGH ITS PRINCIPAL/ AUTHORISED
REPRESENTATIVE,
GODHARA - DAHOD HIGHWAY CHOKDI,
AT: PARAVADI, DAHOD ROAD, TA. GODHARA,
DISTRICT PANCH MAHAL,
GUJARAT-389001

....Respondent No.4

JAY JALARAM INTERNATIONAL SCHOOL
THROUGH ITS PRINCIPAL/ AUTHORISED
REPRESENTATIVE,
ANAND-BORIAVI ROAD, BORIAVI,
GUJRAT-388001

....Respondent No.5

JAY JALARAM INTERNATIONAL SCHOOL



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THROUGH ITS PRINCIPAL/ AUTHORISED
REPRESENTATIVE,
ANAND-BORIAVI ROAD, NEAR SK CINEMA,
BORIAVI, DISTRICT, ANAND,
GUJARAT-387310

....Respondent No. 6

(Through: Mr. Humraz Bir Singh, Adv.)

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. Heard learned counsel for the parties.
2. There seems to be five agreements between the petitioner and respondent nos. 2, 3, 4, 5 and 6.
3. Loan agreements appeared to have been executed on 12.12.2021, 08.01.2013, 23.05.2015, 05.12.2015 and 05.03.2016. The nature of the services that were to be rendered are almost similar.
4. During the course of the hearing, learned counsel who appears for the respondents contends that a common petition for five different agreements is not maintainable. In addition, he contends that in view of the minutes of the meeting dated 28.07.2018, the right of arbitration stands acquiescent. He further submits that, having once had a dispute arise which thereafter culminated into a settlement, the right of arbitration stood waived.
5. I have considered the aforesaid submissions and have perused the record.
6. With respect to the objection of maintainability of a common petition for the appointment of arbitrator under various agreements, the same has



been settled by this Court in the case of petitioner itself *vide* order dated 01.09.2022 in ARB.P. 1150/2021 titled ***Extramarks Education India Private Limited vs. Jhunjhunu Academy & Ors.*** Paragraph Nos. 5 to 7 of the aforesaid decision reads as under:

“5. Learned counsel for the petitioner submits that, as is evident from Agreements dated 01.05.2010, 03.03.2012 and 26.02.2013 signed by the petitioner variously with respondents No.1 and 2, all three Agreements have been signed on behalf of the respondents by Mr. Dilip Modi, who is stated to be the President of respondent No.3/Jhunjhunu Academy Samiti, Jhunjhunu, Rajasthan, which is stated to be a Trust that owns and controls respondents Nos.1 and 2.

6. In view of the foregoing, this court is satisfied that having been duly served and sufficient opportunity having been granted to the respondents to file their reply, they have deliberately omitted to do so. The respondents are accordingly set *ex-parte*.

7. In response to the query as to the commonality between the three Agreements from which disputes are stated to have arisen, learned counsel for the petitioner submits that these three Agreements relate to the supply by the petitioner of Smart Learn Class ('SLC') software and hardware which was deployed by the respondents for imparting education in various subjects to students at various locations. Attention in this behalf is drawn to a list of schools at which the SLCs were to be deployed under the umbrella of respondent No.1/Jhunjhunu Academy, a copy of which has been filed along with the petition. It is noticed that this list has again been signed by Mr. Dilip Modi as Chairman of Jhunjhunu Academy Samiti.”

7. In the instant case as well, there is a commonality amongst the five agreements. The dispute essentially relates to the sale, implementation, and installation of the Hardware, software, and multimedia system accessories for the purpose of setting up 237 Smart Learn Classes at the premises of the respondents.

8. In ***P.R. Shah, Shares & Stock Broker (P) Ltd. v. B.H.H. Securities (P) Ltd.***¹, the Supreme Court held that where a common relief is sought

¹ (2012) 1 SCC 594



against parties who are jointly and severally liable, joint arbitration is legally permissible notwithstanding the existence of separate arbitration agreements. It was also held that where Party A has entered into two distinct arbitration agreements, one with Party B and another with Party C, in respect of the same subject matter or claim, and where the liability of B and C is alleged to be joint and several, Party A is entitled to initiate a composite arbitration proceeding against both B and C. The Court held that the mere fact that the arbitration agreements are not identical or arise from different contracts cannot, by itself, defeat the maintainability of a consolidated arbitration. It was reiterated by the Court that to deny such joint arbitration solely on the ground of the separateness of the agreements would result in multiplicity of proceedings, risk of conflicting awards, and manifest injustice.

9. The respective arbitration clauses in Agreements dated 12.12.2012, 08.01.2013, 05.12.2015, 23.03.2015 and 05.03.2016 are almost similar. The Arbitration Clause in agreements dated 12.12.2012 and 08.01.2013 is reproduced herein:-

“If any dispute or difference of any kind whatsoever arise between the parties in connection with or arising out of this Agreement or any part thereof, such dispute or difference shall be referred to a sole Arbitrator to be appointed by mutual consent of the parties. The venue for arbitration shall be at New Delhi and the Language shall be English. The courts in New Delhi shall have jurisdiction to entertain all disputes between the parties and fees of the arbitrator shall be equally shared by both parties...”

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**, 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* 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.**, and adopted in **NTPC Ltd. v. SPML Infra Ltd** 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.**, 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 mala fide 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 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**".*

11. So far as objection with respect to waiver of the arbitration right is concerned, the same can be raised before the concerned arbitrator.
12. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, Ms. Shilpa Ohri, Advocate (Mobile No. 9871900539 email ID shilpkapoorohri@gmail.com) is appointed as the sole Arbitrator.
13. The arbitration would take place under the aegis of the Delhi
14. 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.
15. 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.
16. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.
17. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator



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on their merits, in accordance with law.

18. Accordingly, the instant petition stands disposed of

PURUSHAINDRA KUMAR KAURAV, J

MAY 13, 2025/aks/mj

Click here to check corrigendum, if any