



2025:DHC:7918



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 1058/2025**Date of Decision: **01.09.2025****IN THE MATTER OF:****AXIS FINANCE LIMITED**

AXIS HOUSE, C-2, WADIA INTERNATIONAL
CENTRE, PANDURANG BUDHKAR MARG,
WORLI, MUMBAI-400025

AND HAVING IT'S BRANCH OFFICE AT:-

85 A 1ST & 2ND FLOOR RISHYAMOOK
BUILDING PANCHKUIAN ROAD,
NEAR R K ASHRAM MARG METRO STATION
NEW DELHI-110001

THROUGH IT'S AUTHORISED REPRESENTATIVE

Mr. Yashasvi Gupta

.....PETITIONER

*(Through: Mr. Vivek Sinha, Mr. Vivek Malik and Mr. Danish
Akhtar, Advs.)*

versus

ARJUN

566 AMBEDKAR MOHALLA
TALERA BUNDI BUNDI RAJASTHAN
323001

.....RESPONDENT No. 1

OMPRAKASH

566 AMBEDKAR MOHALLA



TALERA BUNDI BUNDI
RAJASTHAN 323001

.....RESPONDENT No. 2

LAD
566 AMBEDKAR MOHALLA
TALERA BUNDI BUNDI
RAJASTHAN 323001

.....RESPONDENT No.3

(Through: None.)

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

The present petition has been filed under Section 11 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.

2. The affidavit of service has been filed by the petitioner. The same is extracted as under:

“

AFFIDAVIT OF SERVICE

I, Akshita Khasia aged about 25 years, D/o Mr. Akshay Khasia, Counsel for the Petitioner, having office at C-4/38, Safdarjung Development Area, New Delhi- 110016, hereby solemnly affirm and declare as under:

1. I am the Counsel for the Petitioner herein for the abovementioned Petition and as such I am well conversant with the facts and circumstances of the present Petition and therefore, I am competent to swear by this Affidavit.

2. That the instant matter was listed before this Hon'ble Court on 24.07.2025, wherein this Hon'ble Court was pleased to issue notice to the Respondents.

3. That the copy of above-captioned petition along with the court notice



dated 28.07.2025, has been duly served upon the Respondents on their respective email id: arjuntamboli95670@gmail.com on 29.07.2025 at 3:29 pm.

The copy of the E-mail service is marked and annexed herein as ANNEXURE-A.

4. That the Deponent states that the Email service has been delivered and the same has not bounced back.

5. That the copy of above-captioned petition along with the court notice dated 28.07.2025, has also been duly served upon the Respondents through speedpost on 29.07.2025 and as per the tracking report, the same has been delivered.

The postal receipts along with the copy of the tracking report is being marked and annexed herein as ANNEXURE-B (COLLY.) 6. That the copy of above-captioned petition along with the court notice dated 28.07.2025, has also been duly shared the Respondents through courier on 29.07.2025 and as per the tracking report, the same has been received back.

The courier receipts along with the copy of the tracking report is being marked and annexed herein as ANNEXURE-C (COLLY.)”

3. Learned counsel for the petitioner submits that the Tracking Report shows that the notice has been delivered on the respondent.
4. Under these circumstances, the Court takes up the matter for disposal.
5. The facts of the case would indicate that the petitioner sanctioned and disbursed a sum of Rs. 2,51,567/- in favour of the respondents *vide* agreement dated 01.07.2019. According to the petitioner, the amount was to be repaid through monthly instalments of Rs. 5,141/-.
6. It is the case of the petitioner that the respondent had defaulted in repayment of the instalments. The petitioner, therefore, invoked the arbitration clause i.e. Clause 28(C). According to the petitioner, despite such invocation, the respondent did not come forward.
7. The petitioner, therefore, has approached the Court by way of the instant petition.
8. Clause 28(C) contained in the agreement dated 01.07.2019, is



extracted as under:

“ Clause 28(c):- Notwithstanding sub-clause (a) above, the Lender may, as its option, choose to settle any disputes which may arise out of or in connection with this Agreement by referring the same to arbitration in accordance with the (Indian) arbitrator appointed by the Lender. The arbitration shall be held at Mumbai and / or Delhi, as may be determined by the Lender and the proceedings of such arbitration shall be conducted in English. The Parties here agree that the decision of the arbitrators shall be final and binding. The parties hereby also agree that the cost of the arbitration decision of the arbitrators shall be final and binding. The Parties hereby also agree that the cost of the arbitration proceeding shall be borne by the parties in accordance with the directions of the Arbitrator.”

9. 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***¹, 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***² has held that the scope of inquiry under Section 11 of the Act has been limited to a *prima facie* examination of the existence 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:

¹ 2025 SCC OnLine Del 3022

² 2025:DHC:7477



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. 166. 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 minitrial 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. 167. 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 Spinning*³ 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

³ 2024 SCC OnLine SC 1754



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 Ltd*⁴ 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 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.

⁴ 2025 SCC OnLine SC 1471



(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.”

10. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, this matter is referred to Delhi International Arbitration Centre (DIAC) for appointment of the sole Arbitrator.

11. The arbitration would take place under the aegis of the 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 Act within a week of entering on reference.

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



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the parties. Let a copy of this order be sent do DIAC.

15. Accordingly, the instant petition stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 01, 2025
aks/mj