



2025:DHC:8189



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1070/2025**

Date of Decision: **10.09.2025****IN THE MATTER OF:**

M/S MONEYWISE FINANCIAL SERVICES PVT LTD

.....Petitioner

Through: Ms. Mehvish Khan and Mr. Aman
Choudhary, Advs.

versus

GRAINTEX EXPORTS (INDIA) PVT. LTD. THROUGH ITS
DIRECTORS AND ORS

.....Respondents

Through: None.

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. Learned counsel appearing for the petitioner submits that the affidavit of service has been filed and as per the said affidavit, the service through Email and Whatsapp has been effected on the respondents.

3. She submits that in *M/s Lease Plan India Private Limited v. M/s*



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Rudraksh Pharma Distributor and Ors.¹, this Court has held that Email and Whatsapp service is sufficient and has also taken the note of the fact that when the e-mail is the part of the agreement in question, there is no reason to doubt the service of notice on such email.

4. The Affidavit of service is extracted as under:

"I, Mehvish Khan D/o Sh.Sajed Khan Aged about 35, Counsel for the Petitioner Company, Having Chamber No 164, Civil Wing, Tis Hazari Courts, Delhi-110054, do hereby solemnly affirm as under :-

- 1. That I am the Counsel for the Petitioner Company in the present petition and as such I am fully competent to swear this affidavit.*
- 2. That I have served the notice issued by the Hon'ble High Court along with copy of the petition with all annexures to all the Respondents on behalf of the Petitioner Company to all the email ids of the Respondents on 22.08.2025, on through my e-mail i.e. khanmehvish2189@gmail.com. The copy of the e-mail dated 22.08.2025 is annexed herewith and the details and status of the same are tabulated as under*

<u>Resondent No.</u>	<u>E-mail Address</u>	<u>Date of service</u>	<u>Status</u>
1&2	sunny@graintex.com	22.08.2025	Served
	sales@graintex.com	22.08.2025	Served
3	Gurpreetkaur.sethi@gmail.com	22.08.2025	Served

- 3. That I have served the notice issued by the Hon'ble Court along with copy of the petition with all annexures to all the Respondents on behalf of the Petitioner Company via WhatsApp on 23.08.2025 through WhatsApp number 7303451702. The screenshot of the WhatsApp messages is annexed herewith and the details and status of the same are tabulated as under.*

<u>Resondent No.</u>	<u>E-mail Address</u>	<u>Date of service</u>	<u>Status</u>
1&2	9818925929	23.08.2025	Delivered.
1 & 3	9540311820	23.08.2025	Delivered.
1	9810209729	23.08.2025	Delivered.

- 4. That I have sent the notice issued by the Hon'ble High Court along with copy of the petition with all annexures to the Respondent No 1 on behalf of the Petitioner Company on their "last known & Correct address via*

¹ ARB. P. 1273/2023 dated 10.04.2024



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Courier to the "following addresses:

<u>S.No</u>	<u>Address</u>	<u>Courier "Status"</u>
1.	BHARPURA, P.O.:- SONEPUR, P.S. SONEPUR, SONEPUR BIHAR- 841101	In Transit "Not Generated"
2.	PLOTN0.3-A/2, GALLI NO.14, Item Returned "Party RAILWAY STATION RD., Shifted" SAMAYPUR, NEW DELHI- 110042	Item Returned "Party Shifted"
3.	UNIT NO. G-1501, PARK VIEW GRANDSPA, SECTOR-81, GURGAON, HARYANA- 122004	Item Returned "Door Locked"
4.	SHOP NO-08, MOHALRIYA, NEEMRANA, ALWAR, RAJASTHAN- 301705	Delivered

5. That I have sent the notice issued by the Hon'ble High Court along with copy of the petition with all annexures to the Respondent No 2 on behalf of the Petitioner Company on their last known & Correct address via Courier to the following addresses:

<u>S.No</u>	<u>Address</u>	<u>Courier "Status"</u>
1.	FLAT NO. 042, TOWER-P, DLF NEW TOWN HEIGHTS 90, SECTOR-90, GARHI, GURGAON, HARYANA- 122505	Item Returned "Party Shifted"

6. That I have sent the notice issued by the Hon'ble High Court along with copy of the petition with all annexures to the Respondent No 3 on behalf of



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the Petitoiner Company on their last known and Correct address via Courier to the following addresses:

<u>S.No</u>	<u>Address</u>	<u>Courier "Status"</u>
1.	FLAT NO. 042, TOWER-P, DLF NEW TOWN HEIGHTS 90, SECTOR-90, GARHI, GURGAON, HARYANA- 122505	Item Returned "Party Shifted"

7. That the, Courier Receipts along with their tracking reports are annexed herewith."

5. The paragraph No. 8 of decision of this Court in ***M/s Lease Plan India Private Limited*** is extracted as under:

"8. service by email and WhatsApp is sufficient, it may also be noted that in the Agreement itself, the address of the respondent for the purposes of correspondence, provided in Clause 10.3, is the address at which service has been attempted. The notice invoking arbitration sent to the same address was reported to have been delivered, but in the Speed Post report, by which the petition was sent to the address, it is stated that no such person is available at the address"

6. It is thus seen that despite service, none appears for the respondents and, therefore, the Court proceeds to decide the petition on the basis of the material available on record.

7. The fact of the case would indicate that the Master Loan Agreement dated 03.09.2018 was executed between the petitioner and the respondent. A loan of Rs.25,00,000/- was extended in terms of the said Master Loan Agreement.

8. The respondents were to repay the amount in accordance with physical discipline as agreed, however, as stated by the petitioner that the respondents have defaulted in the repayment.



9. As per the case set up by the petitioner, the loan recall/termination letter dated 26.05.2023 was issued to the respondents has also not been acted upon.

10. Learned counsel appearing for the petitioner submits that as per the clause 10.1 of the Loan Agreement, the dispute is amenable to be decided by the Arbitrator. She, therefore, submits that in view of the aforesaid, the Court may consider appointing the Arbitrator.

11. Clause 10.1 is extracted as under:

“10.1 Arbitration

Any disputes, differences, controversies and questions directly or indirectly arising at any time hereafter between the Parties or their respective representatives or assigns, arising out of or in connection with this Agreement (or the subject matter of the Agreement), including, without limitation any question regarding its existence, validity, interpretation, construction, performance, enforcement, rights and liabilities of the parties, or termination(UDispute. "). shall be referred to Sole arbitrator duly appointed by the lender. The Language of the arbitration shall be English. The seat of the Arbitration shall be at New Delhi and the language of the proceedings shall be English. The Award shall be in writing and shall set out the reasons for the ARB.P.-1070-2025 16 Arbitrator's decision. The costs and expenses o(the Arbitration shall be borne equally by each Party, with each costs and expenses of the Arbitration shall be borne equally by each party, with each party paying (or its own fees and costs including attorney fees, except as may be determined by the arbitral tribunal. Any award by the Arbitration tribunal shall be final and binding.”

12. 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***², 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.***

² 2025 SCC OnLine Del 3022



Mr. Agam Ishwar Trimbak³ 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:

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

³ 2025:DHC:7477



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*⁴ 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 Ltd*⁵ 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

⁴ 2024 SCC OnLine SC 1754

⁵ 2025 SCC OnLine SC 1471



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.

(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.”



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13. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, the Court appoints Mr. Ishaan Seth, Advocate (Mobile No.-8527509899, email id-ishaan.seth2000@gmail.com) as the sole Arbitrator.

14. 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.

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 on their merits, in accordance with law.

18. 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 Arbitrator through the electronic mode as well.

19. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J
SEPTEMBER 10, 2025/p/mj