



2025:DHC:8334



\$-26

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

+ **ARB.P. 1195/2025**

Date of Decision: **12.09.2025**

IN THE MATTER OF:

SHES AIR AND AUTOMATION

THROUGH ITS PROPRIETOR,

MANOJ KRISHNA TARALE

SIDDHI TOWER, 405, 406,

GANESH NAGAR

DAPODI, PUNE

MAHARASHTRA- 411012

.....PETITIONER

Through: Ms. Rupal Dwivedi and Mr. Akhil
Solanki, Advocates.

Versus

1 AIRPORT AUTHORITY OF INDIA

THROUGH ASST. G.M. ENGG. (E) - II

(ENGINEER-IN-CHARGE)

RHQ- NR OPERATION OFFICE

GURGAON ROAD, NEW DELHI:110037

2. REGIONAL EXECUTIVE DIRECTOR

AIRPORT AUTHORITY OF INDIA

RHQ- NR OPERATION OFFICE

GURGAON ROAD, NEW DELHI:110037 RESPONDENTS

Through: Mr. Sonal Kumar Singh, Mr. Ratik
Sharma, Mr. Parth Sindhwani and
Ms.Ashima Acharya, Advocates.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)



1. 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 a project to replace two 350TR centrifugal Central AC Plants with a new 350 TR water-cooled screw type chiller AC plant at respondent no. 1's operation offices in New Delhi, under Work Order dated 18.05.2017. Once the said replacement work was carried out, the parties are stated to have entered into Agreement dated 30.06.2017 in respect of operation and maintenance of the aforesaid machinery (*the Agreement*). The petitioner claims that despite completion and raising all necessary invoices, the outstanding payment has not been made.
3. According to the petitioner, various meetings were conducted towards resolution of the dispute. However, in the interregnum, the respondents issued a show cause notice alleging unauthorized subletting of work by the petitioner to a third-party entity. The petitioner claims to have promptly replied to the said notice while refuting the allegations and highlighting the prior intimation etc. It is the case of the petitioner that the dispute which has arisen between the parties is capable of being adjudicated by an Arbitrator under Clause 25 of the Agreement. The petitioner issued a notice invoking arbitration under Section 21 of the Act on 06.03.2025.
4. The aforesaid contentions are strongly opposed by learned counsel for the respondents, and according to him, the claim in petition is time-barred,



and the petitioner, by way of the instant application, cannot be permitted to revive the said claim.

5. I have considered the submissions made by learned counsel for the parties and also perused the record.

6. The facts of the case would *prima facie* indicate that various exchanges of communication have taken place after 2017. Even as per the list of dates, on 04.05.2022, the petitioner claims to have circulated the record of discussions to officers of Respondent No.1 *via* email and thereafter, on 18.09.2022, the petitioner also sent a demand notice and an email to the respondent for payment of the retention money due since 01.05.2018 amounting to Rs.12,59,196/- and for due invoice for annual maintenance charge dated 29.04.2022 amounting to Rs.11,34,683/-. There seems to be a reminder sent on 03.01.2024, wherein, the amount claimed was Rs.45,98,514/-. The last communication which the petitioner seems to have made is dated 24.02.2024, wherein, a separate demand notice was sent for constituting DRC or payment of the due amount along with the interest. The petitioner has also sent a legal notice dated 05.03.2025 under Section 21 of the Act in order to invoke arbitration.

7. Therefore, it is seen that *prima facie*, the present petition does not seem to be barred. However, the question as to whether the claim is actually time-barred, can be looked into by the Arbitrator, without reference to the aforesaid observations.

8. The Court also takes note of Clause 25 of the Agreement, which is



extracted as under:-

“Clause 25 of General Conditions of Contract- Dispute Resolution Mechanism and Arbitration

“Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instruction here-in 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, drawing, specifications, estimates, instructions, orders or these conditions or otherwise concerning the work 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 requirement of the contract, or disputes any drawing, record or decision given in writing by the Engineer-in-Charge or if the Engineer-in-Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed such party shall promptly within 15 days of the arising of the disputes request the Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman, AAI as the case may be, who shall refer the dispute to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any, in respect of each such disputes. The Dispute Redressal Committee (DRC) shall give the opposing party two weeks for a written response, and give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from the Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman, AAI. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate / legal counsel etc.

If the Dispute Redressal Committee (DRC) fails to give its decision within aforesaid period or any party is dis-satisfied with the decision of Dispute Redressal Committee (DRC) or expiry of time limit given above, then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee(DRC), give notice to the Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman,



AAI as the case may be for appointment of Arbitrator on prescribed proforma as per Appendix-XVII under intimation to the other party.

It is also a term of contract and each party invoking Arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking Arbitration.

The Executive Director (Engg.)/Regional Executive Director/Member (Plg)/Chairman, AAI shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer in Charge to Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman, AAI for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator, who shall act as the presiding arbitrator. In the event of:

- a. A party fails to appoint the second arbitrator, or*
- b. The two appointed arbitrators fail to appoint the Presiding Arbitrator then Member (Plg)/Chairman, AAI shall appoint the second or Presiding Arbitrator as the case may be.*

ii. Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having Sole Arbitrator where tendered amount is Rs. 100.00 Cr or less. Where tendered value is more than Rs. 100.00 Cr., Tribunal shall consist of three arbitrators as above. The requirements of the arbitration and the conciliation act, 1996 (26 of 1996) and any further statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall be applicable.

It is a term of this contract that the party invoking Arbitration shall give a list of disputes with amounts, claimed, if any, in respect of each such disputes along with the notice for appointment of Arbitrator and giving reference to the decision of the DRC.

It is also term of this contract that any member of Arbitration Tribunal shall be a graduate engineer with experience in



handling public works, engineering contracts at a level not lower than Chief Engineer. This shall be treated as a mandatory qualification to be appointed as Arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast-track arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counterclaims if any can be directly filed before the arbitrator without any requirement of reference by the Appointing Authority, the Arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each disputes and claim referred to him and in all cases where the total amount of the claims by any party exceed 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 as per the Act. 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 place of the arbitration shall be mentioned in schedule 'F'. In case there is no mention of place of arbitration, the Arbitral Tribunal shall determine the place of arbitration. The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.”

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.***

¹ 2025 SCC OnLine Del 3022



Mr. Agam Ishwar Trimbak² 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

² 2025:DHC:7477



“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 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

³ 2024 SCC OnLine SC 1754

⁴ 2025 SCC OnLine SC 1471



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.

(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 Court appoints Mr. Aviral Kumar Mishra, Advocate (Mobile No.+91 7985026059, e-mail id: adv.avirmishra03@gmail.com) as the Sole Arbitrator.
11. 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.
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. The Registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.
14. 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.
15. 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.
16. Accordingly, the instant petition stands disposed of.



2025:DHC:8334



SEPTEMBER 12, 2025

Nc/amg

PURUSHAINDRA KUMAR KAURAV, J