



2025:DHC:8750



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 1244/2025**Date of Decision: **19.09.2025****IN THE MATTER OF:**

M/S MONEYWISE FINANCIAL SERVICES PVT. LTD.
(THROUGH ITS AUTHORIZED REPRESENTATIVE)
MRS. SEEMA SHARMA
OFFICE AT 11/6-B, 2ND FLOOR, SHANTI CHAMBER,
PUSA ROAD, NEW DELHI-1 10005

..... PETITIONER

Through: Mr. Ranjeet Kuamr and Ms.Preeti
Kumari, Advocates.

Versus

MR. MOHD. SHADAB
S/O HASINUDDIN
AT: 104 GALI NO.6,
JAFRABAD DELHI - 10053
ALSO AT: CHAMARAN 3 BUDHANA,
MUZAFFARNAGAR, UTTAR PRADESH – 251309

s

.... RESPONDENTS

Through: None.

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), seeking the appointment of an Arbitrator to adjudicate upon the disputes that have arisen between the



parties under the Agreement dated 20.11.2023.

2. Learned counsel for the petitioner has placed on record the service affidavit, which reads as under:-

“AFFIDAVIT OF SERVICE

1, Preeti Kumari , D/o Sh. Anil Kumar, aged about 37 years, with office at 1 1/6-B, Second Floor, Shanti Chamber, Pusa Road, New Delhi-110005, do hereby solemnly affirm and declare as under:

1. That I am the Counsel of the petitioner company and I am competent to swear the present affidavit

2. That I have served the copy of the petition filed under section 11 of the A& C Act, 1996 to the respondents with all the annexures thereof through my official/professional e-mail id i.e. advocatepreetyllm@gmail.com to the respondents e-mail dmohdshadab892@gmail.com on 13.08.2025. It is submitted that the notices duly delivered to the respondents e-mail Id's. The content of the present affidavit are true and correct to the best of my knowledge and nothing material is to be concealed therefrom.”

3. In view of the aforesaid, it is seen that despite service, no one appeared on behalf of the respondent. Therefore, the Court proceeds to hear the matter.

4. The facts of the case indicate that the dispute arises from the agreement dated 20.11.2023 entered into between the parties. It is contended by the petitioner that it is a registered NBFC company incorporated under the Companies Act, 1956 and engaged in various lending services, including loans against property, gold loans, and unsecured business loans, with its registered office at Shanti Chambers, New Delhi. The petitioner appointed the respondent as an Assistant Manager at its Vishwas Nagar Branch on 20.11.2023, and the respondent digitally executed an Appointment Letter, Employee Code of Conduct, and Bond of Indemnity at the time of joining.



However, it is contended that the respondent, after receiving salary for the month of December 2023, stopped reporting to duty without any intimation or approval, prompting the petitioner to issue show cause notices *via* email dated 09.01.2024 and 11.01.2024, which were neither acknowledged nor responded to by the respondent.

5. The case set up by the petitioner is that despite repeated reminders and efforts, the respondent failed to report back to duty, leaving the petitioner with no option but to issue a deemed resignation letter dated 15.01.2024. The petitioner further contends that the respondent failed to comply with the contractual obligations as per the Appointment Letter and Bond of Indemnity, which mandated a minimum service period of 9 months and a 90-day notice period (or salary in lieu thereof) in case of resignation. It is submitted that the respondent deliberately breached these terms and caused financial losses to the petitioner, which include an amount of Rs. 7,05,142. Despite the issuance of a notice of reference under Section 21 of the A&C Act through speed post and email on 16.05.2025 and 15.06.2025, respectively, the respondent failed to respond. The said agreement contained an arbitration clause stipulating resolution of disputes through arbitration within the jurisdiction of the courts in New Delhi. Accordingly, the petitioner has approached this Court for the appointment of an arbitrator to resolve the dispute.

6. The Court takes note of Clause 13 of the Agreement dated 20.11.2023, which reads as under:-

“Clause 13 Arbitration:



"Any dispute or claim that arises out of or that relates to this appointment letter, or that relates to the breach of this agreement, or that arises out of or that is based upon the employment relationship during the course of your employment with the company or thereafter (including any wage claim, any claim for wrongful termination, or any claim based upon any statute, regulation, or law, including those dealing with employment discrimination, sexual harassment, civil rights, age, or disabilities), shall be resolved by arbitration under the provisions of Arbitration & Conciliation Act, 1996, as amended from time to time. The decision of the arbitrator shall be conclusive and binding upon both the parties. It is confirmed, accepted and agreed by you that the courts at Delhi alone shall have the sole and exclusive jurisdiction in relation to the matter of arbitration or any other matter. This arbitration clause is irrevocable and cannot be revoked either by the company or by you under any circumstances, whatsoever."

7. 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)

¹ 2025 SCC OnLine Del 3022

² 2025:DHC:7477



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. 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 competencecompetence, 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

³ 2024 SCC OnLine SC 1754



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 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

⁴ 2025 SCC OnLine SC 1471



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 Mr Vineeth Varma Penmetsa (Mobile No +91-7093459359, e-mail id: vineeth.penmetsa@gmail.com) 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



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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. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

SEPTEMBER 19, 2025

Nc/mj