



2025:DHC:9815



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1448/2025**

Date of Decision: **17.10.2025****IN THE MATTER OF:****TATA CAPITAL LIMITED**

.....Petitioner

Through: **Mr. Varun Bedi and Ms. Swati Ahalawat, Advs.**

versus

**1. BANSAL TEXTFAB PRIVATE LIMITED
& ORS.**

.....Respondents

Through: **None.****CORAM:****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), seeking appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties.
2. The petitioner has placed on record the affidavit of service, the same is extracted as under:

"I, Satendra Yadav, aged about 31 years Authorized Representative of Tata Capital Ltd. having its regional office at 9th Floor, Videocon Tower, Block E 1, Jhandewalan Extension, New Delhi-110055 the above named Deponent do hereby solemnly affirm and declare as under:

1. That I am the Authorized Representative of the Petitioner Company in the above noted case and well conversant with the facts and circumstances

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of the same, hence competent to swear the present affidavit.

2. That the copy of the entire paper book along all the annexures has been sent to the Respondent through speed post vide consignment number ED952620640IN, ED952620622IN, ED952620636IN which has been shown to be delivered and through courier vide consignment no. 25039200421743, 25039200421744, 25039200421747 & 25039200421748 as per the tracking report consignment no. 25039200421743. (Respondent No. 1) has not been delivered however the remaining consignment no. 25039200421744, 25039200421747, 25039200421748 has been shown to be delivered to the Respondents. Copy of the receipt along with their tracking report is annexed herewith and marked as ANNEXURE A (Colly)

3. That the entire paper book was also sent by the Petitioner to the Respondent through email dated 13.10.2025 and as per the records the mail sent to the Respondent on email id bansaltexfab@yahoo.com has been delivered to the Respondent and the said email has not been bounced back. Copy of the email dated 13.10.2025 sent by the Petitioner to the Respondents is annexed herewith and marked as ANNEXURE B

4. That certificate under Section 63(4) OF THE BHARATIYA SAKSHYA ADHINIYAM, 2023 is also annexed herewith.”

3. It is, thus, seen that despite service of notice, no one appears on behalf of the respondents.

4. The facts of the case would indicate that disputes have arisen out of and are pertaining to the loan agreement dated 30.11.2023, bearing loan account no. TCFBL0363000012526166, executed between the petitioner and the respondents. The said petition has been necessitated as the parties failed to mutually agree on the appointment of the sole arbitrator within thirty days from the date of receipt of the request made by one party to the other. The petitioner, therefore, has been constrained to file the present application seeking the intervention of this Court for the appointment of the arbitrator. It is submitted that the petitioner invoked arbitration through its notice dated 06.05.2025, proposing the appointment of a sole arbitrator from

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the panel of the Delhi International Arbitration Centre (DIAC). However, despite the lapse of the stipulated period, no reply or consent was received from the respondents, thereby justifying the filing of the present petition.

5. The facts further reveal that the petitioner company, Tata Capital Limited, is a company registered under the *Companies Act, 2013*, engaged in providing financial and credit facilities, including business loans, to borrowers across India. The respondents had availed a business loan of Rs. 40,00,000/- (Rupees Forty Lakh only) from the petitioner under the loan agreement dated 30.11.2023, agreeing to repay the same in equated monthly installments (EMIs). However, despite repeated reminders and follow-ups, the respondents defaulted in making timely payments, thereby committing a breach of the contractual terms. Consequently, the petitioner issued a legal recall notice dated 23.04.2025, demanding repayment of the outstanding dues, but the respondents failed to comply. As per the petitioner's statement of account maintained in the regular course of business, a sum of Rs. 30,17,114/- (Rupees Thirty Lakh Seventeen Thousand One Hundred and Fourteen only) remains outstanding as on 29.08.2025, along with contractual interest. Since clause 9 of the loan agreement contains an arbitration clause, the petitioner seeks the appointment of a sole arbitrator to adjudicate the present dispute.

6. The arbitration clause i.e. clause 9 of the Loan agreement dated 30.11.2023 is extracted as under:

“9. Arbitration

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to

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be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held at the said Location (as defined below) in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator appointed in accordance with the Arbitration and Conciliation Act, 1996. The award of the arbitrator shall be final and binding on all parties concerned. The seat of arbitration for all purposes shall be Chennai unless any other place is agreed and mentioned in Annexure 1 hereto ("said Location"). The language of arbitral proceedings shall be English. The courts at the said Location shall have exclusive jurisdiction in respect of matters arising under this Agreement including any application for setting aside the award/appeal and the Lender/ Borrower(s) shall not object to such jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The award of the arbitrator shall be final and binding on all parties concerned. The cost of arbitration shall be borne by the Borrower."

7. Thus, under these circumstances, it is seen that a dispute as arisen between the parties which is amenable to be adjudicated by the Arbitrator.

8. 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 Ltd¹***, has extensively dealt with the scope of interference at the stage of Section 11. Furthermore, this Court, in ***Axis Finance Limited Vs. Mr. Agam Ishwar Trimbak*** has held that the scope of inquiry under Section 11 of the Act is 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

¹ 2025 SCC OnLine Del 3022



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 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

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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 Spinning² 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.

² 2024 SCC OnLine SC 1754



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 Ltd³ 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

³ 2025 SCC OnLine SC 1471



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.”

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 Ms. Shagun Shahi, Advocate (Mobile No: +91 9779645915, e-mail id: adv.shagunshahi@gmail.com) as the sole Arbitrator.

10. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12 of the Act.

11. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the Act or as may otherwise be agreed to between the



parties and the learned Sole Arbitrator.

12. The parties shall share the arbitrator's fee and arbitral cost, equally.

13. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.

14. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy. All rights and contentions of the parties in this regard are reserved. Let the copy of the said order be sent to the Sole Arbitrator through the electronic mode as well.

15. Accordingly, the instant petition stands disposed of.

PURUSHAINdra KUMAR KAURAV, J

OCTOBER 17, 2025

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