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

+ **ARB.P. 1494/2025**

Date of Decision: **21.11.2025**

IN THE MATTER OF:

BASANT KUMAR RAI

.....Petitioner

Through: **Mr. Arpit Dwivedi, Ms. Sakshi Kapoor, Advs.**

versus

HINDUSTAN URVARAK AND RASAYAN LIMITED & ANR.

.....Respondents

Through: **Mr. Raj Anand, Mr. Nilanjan Chatterjee, Ms. Pragya Chatterjee, Mr. Kushagra Raj, Ms. Shruti, Ms. Manavi Tyagi, Mr. Divyodit, Advs. for R-1/HURL**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

I.A. 22946/2025 (Exemption)

1. The application has already been disposed of *vide* order dated 16.09.2025.

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2. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act'), seeking appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the



parties.

3. The case of the petitioner is that he is a Government-registered civil contractor and was engaged by respondent no. 1 for carrying out certain civil works at one of the said respondent's plant *vide* Letter of Intent dated 06.09.2019 (hereinafter 'the LoI') and Contract Agreement dated 28.01.2020 (hereinafter 'the Agreement'). Under the Agreement, the stipulated completion date for the said works was 05.05.2020. However, due to the restrictions during the Covid-19 pandemic, the petitioner was unable to complete the work within the stipulated period, which came to be extended on multiple occasions by respondent no. 1. However, despite the said extensions, respondent no. 2, acting on behalf of respondent no. 1, terminated the Agreement on 03.10.2022. The respondents also deducted a sum of Rs. 2,47,29,469/- (Rupees Two Crore Forty-Seven Lakh Twenty-Nine Thousand Four Hundred and Sixty-Nine only) as damages, along with additional deductions of 'escalation costs', and released a sum of Rs. 5,54,18,355/- (Rupees Five Crore Fifty-Four Lakh Eighteen Thousand Three Hundred and Fifty-Five only) towards settlement of the amounts payable to the petitioner. The petitioner claims that the same has resulted in loss of business opportunities and revenue due to operational disruptions caused by the respondents' conduct and seeks compensation for the same.

4. Learned counsel for the petitioner submits that Article 35.4 of the General Conditions of Contract (hereinafter 'the GCC') annexed with the LoI provides for arbitration. The same is extracted below, for reference:

"35.4 ARBITRATION

a) Any dispute or difference whatsoever arising between the parties out of relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by



arbitration in accordance with the provisions of the Arbitration & Conciliation Act, 1996 and any amendments thereafter, and the award made in pursuance thereof shall be binding on the parties.

b) The performance under this contract shall not stop for any reason whatsoever during the said dispute/proceedings, unless the contractor/supplier is specifically directed by Owner/Buyer to desist from working in this behalf.

c) The Jurisdiction Venue of all arbitration shall be at Delhi only.

d) The language of proceedings shall be English

e) The Law governing the substantive issues between the parties shall be the Laws of India.”

5. Learned counsel for respondent no. 1 opposes the petition and contends that respondent no. 1 is not privy to any arbitration agreement with the petitioner. He points out that the LoI to which the GCC containing the arbitration clause is annexed, is signed only by a representative of respondent no. 2 and not respondent no. 1. He places reliance on the decision of the Supreme Court in ***M.R. Engineers and Contractors Private Limited v. Som Datt Builders¹***, more particularly paragraphs no. 24 and 33 thereof, to contend that an arbitration agreement is not binding on a non-party. The aforesaid paragraphs are extracted below, for reference:

“24. The scope and intent of section 7(5) of the Act may therefore be summarized thus:

(i) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled :

(i) The contract should contain a clear reference to the documents containing arbitration clause, (ii) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract,

(iii) The arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.

¹ 2009 7 SCC 696



- (ii) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. The arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.
- (iii) Where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.
- (iv) Where the contract provides that the standard form of terms and conditions of an independent Trade or Professional Institution (as for example the Standard Terms & Conditions of a Trade Association or Architects Association) will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. Sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions.
- (v) Where the contract between the parties stipulates that the Conditions of Contract of one of the parties to the contract shall form a part of their contract (as for example the General Conditions of Contract of the Government where Government is a party), the arbitration clause forming part of such General Conditions of contract will apply to the contract between the parties.

XXXXX

“ 33. An arbitration clause though an integral part of the contract, is an agreement within an agreement. It is a collateral term of a contract, independent of and distinct from its substantive terms. It is not a term relating to 'carrying out' of the contract. In the absence of a clear or specific indication that the main contract in entirety including the arbitration agreement was intended to be made applicable to the sub-contract between the parties, and as the wording of the sub-contract discloses only an intention to incorporate by reference the terms of the main contract relating to execution of the work as contrasted from dispute resolution, we are of the view that the arbitration clause in the main contract did not form part of the sub-contract between the parties.”

6. Under Article 1.1 of the Agreement, the LoI and the GCC, along with





other documents, are deemed to be 'Contract Documents' and to form an integral part of the Agreement. The said article is extracted below, for reference:

1.1 The term 'CONTRACT DOCUMENTS' shall mean and include the following documents which shall constitute the Contract and shall be deemed to form an integral part of the Contract:

a) Contract Agreement and its Appendices

b) Letter of Intent (LOI) PNPM/EM270/LOI/E/B-212-dt. 06th September, 2019

c) Special Conditions of Contract and amended/clarification, if any

d) General Conditions of Contract and amended/clarification, if any.

e) Part-II, Technical, of the NIT documents and amended/clarification, if any.

f) Technical Specifications and Drawings and amended/clarification, if any

g) The Bid and Schedule of Prices including Supplementary Price, if any of

h) Integrity Pact (IP) signed between the Owner and the Bidder/Contractor

i) Instruction to Bidders.

The above documents are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

7. Furthermore, in the LoI and the other contract documents, respondent no. 2 is explicitly stated to be acting on behalf of respondent no. 1. Therefore, the submission that respondent no. 1 is not privy to any arbitration agreement with the petitioner, cannot be accepted.

8. Reliance is placed on behalf of the petitioner, on the order of Coordinate Bench of this Court in ARB.P.563/2025 titled **Basant Kumar Rai v. Hindustan Urvarak and Rasayan Limited (HURL) & Anr.** dated 22.08.2025, wherein an Arbitrator was appointed in a similar dispute between the same parties.

9. The decision in **M.R. Engineers and Contractors Private Limited** cannot be of much use to the respondent since, the Court, therein, has held



only that mere general references in a contract to a different contract would not result in incorporation of the other contract into the first one. In fact, in paragraph no. 24 (v) of the said decision, the Court has clearly held that, where a contract stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract (as for example the General Conditions of Contract of the Government where Government is a party), the arbitration clause forming part of such General Conditions of Contract will apply to the contract between the parties. The said observation applies squarely to the present case, wherein, the arbitration clause is in the General Conditions of Contract which is deemed to form an integral part of the Agreement.

10. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the Act is no longer *res integra*. This Court in ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd***², has extensively dealt with the scope of interference at the stage of Section 11 of the Act. Furthermore, in ***Axis Finance Limited v. Mr. Agam Ishwar Trimbak***,³ this Court 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 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

² 2025 SCC OnLine Del 3022

³ 2025:DHC:7477



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 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*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

⁴ 2024 SCC OnLine SC 1754





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 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

⁵ 2025 SCC OnLine SC 1471



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.”

11. In view of the fact that a dispute has arisen between the parties, and the existence of an arbitration agreement, Mr. Justice Rajul Bhargava (Retd.) (Mobile No: +91-9839053626; Email: rajulbhargava18@gmail.com) is appointed as the Sole Arbitrator.

12. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and in terms of its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

13. 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.

14. 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





2025:DHC:10985



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 a copy of the instant order be sent to the Sole Arbitrator through electronic mode as well.

16. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 21, 2025

Pallavi/amg

Signature Not Verified

Signed By:AMIT KUMAR
SHARMA
Signing Date:06.12.2025
16:24:14

Signature Not Verified

Signed
By:PURUSHAINDRA
KUMAR KAURAV