



2025:DHC:10180



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1683/2025**

Date of Decision: **07.11.2025****IN THE MATTER OF:**

VASU CHEMICALS LLP

.....Petitioner

Through: Mr. Anuj P. Agarwal & Mr. Mallika
Luthra, Advs.

versus

GAIL (INDIA) LIMITED

.....Respondent

Through: Mr. Divyam Nandrajog & Mr. Dhruv
Kaushik, Advs.**CORAM:****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

The present petition is filed seeking appointment of arbitrator with respect to dispute which is stated to have arisen out of clause 6 of the general terms and conditions of the contract under the letter of acceptance dated 02.01.2019, executed between the petitioner and the respondent.

2. Admittedly, there exists clause 6 in the said general terms and conditions, the relevant extract of which is reproduced as under.

“6.2.1 If the issues/disputes which cannot be resolved through dispute resolution mechanism pursuant to clause no. 6.1, all disputes such shall be referred to arbitration by Sole Arbitrator. The Employer shall suggest a panel of three independent and distinguished persons to the /Service Provider to select any one among them to act as the Sole Arbitrator. In the event of failure of the other parties to select the Sole Arbitrator within 30

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days from the receipt of the communication suggesting the panel of arbitrators, the right of selection of the sole arbitrator by the other party shall stand forfeited and the Employer shall have discretion to proceed with the appointment of the Sole Arbitrator. The decision of Employer on the appointment of the sole arbitrator shall be final and binding on the parties. The award of sole arbitrator shall be final and binding on the parties and unless directed/awarded otherwise by the sole arbitrator, the cost of arbitration proceedings shall be shared equally by the parties. The Arbitration proceedings shall be in English language and seat/venue shall be New Delhi, India. Subject to the above, the provisions of Indian Arbitration & Conciliation Act 1996 and the Rules and amendment thereof shall be applicable. All matter relating to this Contract are subject to the exclusive jurisdiction of the court situated in the state of Delhi. Contractor may please note that the Arbitration & Conciliation Act 1996 was enacted by the Indian Parliament and is based on United Nations Commission on International Trade Law (UNCITRAL model law), which were prepared after extensive consultation with Arbitral Institutions and centers of International Commercial Arbitration. The United Nations General Assembly vide resolution 31/98 adopted the UNCITRAL Arbitration rules on 15 December 1976. Notwithstanding anything contained contrary in GCC and other Contract Documents, in case it is found that the Bidder/Service Provider indulged in fraudulent/ coercive practices at the time of bidding or during execution of the contract as mentioned in "Procedure for action in case of Corrupt/ Fraudulent/ Collusive /Coersive Practices", the Service Provider / Bidder shall be banned (in terms of aforesaid procedure) from the date of issuance of such order for banning. The Bidder/Service Provider understands and agrees that in such cases of banning, the decision of Employer shall be final and binding on such Bidder/Service Provider and the Arbitration Clause mentioned in the GCC and other Contract Documents shall not be applicable for any issue /dispute arising in the matter."

3. 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**, 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 Trimbak²** has held that the scope of inquiry under Section

¹ 2025 SCC OnLine Del 3022

² 2025:DHC:7477



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 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, 1996. 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 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. 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



Spinning³ 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 Ltd⁴ 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

³ 2024 SCC OnLine SC 1754

⁴ 2025 SCC OnLine SC 1471



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.”

4. During the course of arguments, Mr. Divyam Nandrajog, learned counsel for the respondent, raised several objections, including an objection regarding the limitation of the claim. Relying on the judgment of the



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Supreme Court in *SBI General Insurance Co. Ltd. versus Krish Spinning*⁵, he submitted that although the referral Court, while deciding a petition under Section 11 for appointment of an arbitrator, is not expected to conduct an intricate evidentiary inquiry into whether the claims are time-barred, the Court may still decline reference if, on the face of the record the facts clearly establish that the claims are *ex facie* barred by limitation. He accordingly argued that in the present case, the letter of acceptance dated 09.12.2018 was valid for a period of 730 days, which was subsequently extended by four months, and therefore the cause of action, if any, arose on 09.04.2021.

5. Conversely, Mr. Anuj P. Agarwal, learned counsel for the petitioner, has referred to the notice dated 09.05.2025, pointing out that, as per the conciliation page therein, the cause of action arose on 17.10.2024. According to him, the issue of limitation is a matter that can appropriately be examined by the arbitral tribunal during the course of the proceedings.

6. During the hearing, the Court sought to ascertain on which specific date the respondent had refused to honour the petitioner's claim. It appears from the record that no such specific document evidencing a refusal has been placed on file. What does emerge, however, is that the respondent has issued a notice invoking arbitration.

7. In these circumstances, and even on the respondent's own showing, there appears to be a subsisting dispute between the parties. Therefore, leaving all questions, including that of limitation, to be adjudicated by the arbitral tribunal, there is no impediment to the appointment of an arbitrator.

9. Accordingly, this Court appoints Ms. Sushma Chowla (Mobile No.

⁵ 2024 INSC 532



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+91 9960682530, e-mail id: sushmachowla@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. 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.

13. 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 Sole Arbitrator through electronic mode as well.

14. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 7, 2025

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