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

\+ ARB.P. 1813/2024

Date of Decision: 13.05.2025

AXIS FINANCE LIMITED
THROUGH ITS AUTHORISED OFFICER
HAVING ITS REGIONAL OFFICE AT
AXIS FINANCE LTD, 85-A, 1ST& 2ND FLOOR,
RISHYAMOOK BUILDING, PANCHKUIAN ROAD,
NEAR R.K. ASHRAM MARG METRO,
NEW DELHI-110001 .....Petitioner

(Through: Mr. Abu John Mathew and Mr. Raveesh Thukral, Advs.)

versus

CHUKKA KAVITHA
H. NO.58-6-22, KADIPIKONDA,
KAZIPET, WARANGAL,
TELANGANA- 506003 .....Respondent No.1

CHUKKA ANIL KUMAR
H. NO.58-6-22, KADIPIKONDA,
KAZIPET, WARANGAL,
TELANGANA- 506003 .....Respondent No.2

(Through: None.)

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. Heard learned counsel for the petitioner.

2. The petitioner has placed on record the service affidavit which reads as under:

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Signed By:PURUSHAINDRA KUMAR KAURAV

"***AFFIDAVIT***

I, Raveesh Thukral, Counsel for Petitioner having office at B-68, Basement Lajpat Nagar -1 New Delhi-110024 do hereby solemnly affirm and declare as under:

1. The deponent is the counsel for the Petitioner in the above matter and is well conversant with the facts and circumstances of the case and is thus competent to sear this affidavit.

2. The entire copy of the Petition under Section 11 of the A&C Act, 1996 was duly served upon the Respondent through speed post, in compliance of direction of this Hon'ble Court vide order dated 25.03.2025. Copy of postal receipt alongwith tracking report is annexed herewith as ANNEXURE 1 (COLLY).

3. This is my true and correct statement.

DEPONENT"

3. The track report which is placed on record with the aforesaid report reflects that the registered post has duly been served upon the respondents. However, despite service, no one appears on behalf of the respondents.

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

5. The facts of the case would indicate that the petitioner sanctioned a sum of Rs. 25,08,125/- as a loan to the respondents on the conditions agreed between the parties. The Loan Agreement was executed on 31.10.2022.

6. As per the case set up by the petitioner, the respondents failed to comply with the terms and conditions of the loan agreement as the fiscal discipline agreed upon between the parties in the loan agreement was not adhered to. Therefore, the petitioner on 24.09.2024 issued a notice under Section 21 of the 1996 Act. Despite the same, the respondent did not take any steps, and, therefore, the petitioner has approached this Court by filing the instant petition.

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7. The Court has perused the Clause 29 of the loan agreement which reads as under:

> "*29. JURISDICTION & DISPUTE RESOLUTION*
>
> *(a) The Terms of Facility shall be governed by the laws of India and shall be subject to the exclusive jurisdiction of courts and tribunals in Mumbai and/or Delhi, to settle any disputes, wh1ch may arise out of, or in connection with, this Indenture and that, accordingly, any legal action, suit or proceedings arising out of, or in connection with, the Terms of Facility may be brought in those courts and tribunals and the Borrower irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of those courts and tribunals.*
>
> *(b) court or tribunal of competent jurisdiction, nor shall the taking of proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not and the Borrower irrevocably submits to, and accepts, generally and unconditionally, the jurisdiction of such courts and tribunals, and the Borrower irrevocably waives any objection it may have now or in the future on the ground of an inconvenient forum.*
>
> *(c) Notwithstanding sub-clause (a) above, the Lender may, at its option, choose to settle any disputes which may arise out of or in connection with this Agreement by referring the same to arbitration in accordance with the (Indian} Arbitration and Conciliation Act, 1996 as amended from time to time. The arbitral tribunal shall comprise of a sole arbitrator appointed by the Lender. The arbitration shall be held at Mumbai and/or Delhi, as may be determined by the Lender and the proceedings of such arbitration shall be conducted in English. The Parties hereby agree that the decision of the arbitrators shall be final and binding. The Parties hereby also agree that the cost of the arbitration proceeding shall be borne by the Borrower.*
>
> *(d) Notwithstanding anything to the contrary contained herein. any dispute. controversy or claim arising out of or relating to this contract, including its construction. meaning, scope or validity thereof shall be resolved and settled by arbitration under the Arbitration and Conciliation Act, 1996 (as amended) which may be administered electronically under Online Dispute Resolution (ODR), in accordance with its Dispute Resolution Rules ("Rules").*
>
> *(e) The parties consent to carry out the aforesaid proceedings electronically via the following email addresses and/ or mobile numbers as per Axis Finance records, updated from time to time.*

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(f) *The parties agree that the aforesaid proceedings shall be carried out by a sole arbitrator, appointed under the Rules. The juridical seat of arbitration shall be Delhi/Mumbai, India and the aforesaid proceedings shall be subject to the exclusive jurisdiction of the competent courts in Delhi/Mumbai, India. The language of arbitration shall be English. The law governing the arbitration proceedings shall be Indian law. The decision of the arbitrator shall be final and binding on the parties.*

(g) *Without prejudice to the generality of the clause, the lender shall have the right to seek remedies under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as applicable, the insolvency ·and Bankruptcy Code, 2016 and for the Recovery of Debts and Bankruptcy Act, 1993 (DRT Act). in the event the legal status of the Lender changes or the law is amended or made to enable the Lender to proceed to recover dues from the Borrower under the DRT Act in relation to its rights under the Finance Documents. Provided, however, that neither any such change in legal status of Lender nor change in law referred to hereinabove, shall invalidate an existing award passed by the arbitral tribunal pursuant to sub-clause (c) above*."

8. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. This Court as well in the order dated 24.04.2025 in case of ARB.P. 145/2025 titled as ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd*** has extensively dealt with the scope of interference at the stage of Section 11. The Court held as under:-

"9. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. The Supreme Court in the case of ***SBI General Insurance Co. Ltd. v. Krish Spinning,*** *while considering all earlier pronouncements including the Constitutional Bench decision of seven judges in the case of* ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899****,* ***In re*** [1] *has held that scope of inquiry at the stage of appointment of an Arbitrator is limited to the extent of prima facie existence of the arbitration agreement and nothing*

[1] 2023 SCC OnLine SC 1666.

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else.

10. It has unequivocally been held in paragraph no.114 in the case of ***SBI General Insurance Co. Ltd*** *that observations made in* ***Vidya Drolia v. Durga Trading Corpn.,*** *and adopted in* ***NTPC Ltd. v. SPML Infra Ltd.,***[2] *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 not apply after the decision of* ***Re: Interplay****. The abovenoted paragraph no.114 in the case of* ***SBI General Insurance Co. Ltd*** *reads 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)."*

11. Ex-facie frivolity and dishonesty are the issues, which have been held to be within the scope of the Arbitral Tribunal which is equally capable of deciding upon the appreciation of evidence adduced by the parties. While considering the aforesaid pronouncements of the Supreme Court, the Supreme Court in the case of ***Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd.,*** *however, has held that the referral Courts under Section 11 must not be misused by one party in order to force other parties to the arbitration agreement to participate in a time-consuming and costly arbitration process. Few instances have been delineated such as, the adjudication of a non-existent and malafide claim through arbitration. The Court, however, in order to balance the limited scope of judicial interference of the referral Court with the interest of the parties who might be constrained to participate in the arbitration proceedings, has held that the Arbitral Tribunal eventually may direct that the costs of the arbitration shall be borne by the party which the Arbitral Tribunal finds to have abused the process of law and caused unnecessary harassment to the other parties to the arbitration.*

12. It is thus seen that the Supreme Court has deferred the adjudication of aspects relating to frivolous, non-existent and malafide claims from the referral stage till the arbitration proceedings eventually come to an

[2] *(*2023) 9 SCC 385.

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end. The relevant extracts of ***Goqii Technologies (P) Ltd.*** *reads as under:-*

> ***"20.*** *As observed in Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754 : 2024 INSC 532] , frivolity in litigation too is an aspect which the referral court should not decide at the stage of Section 11 as the arbitrator is equally, if not more, competent to adjudicate the same.*
>
> ***21.*** *Before we conclude, we must clarify that the limited jurisdiction of the referral courts under Section 11 must not be misused by parties in order to force other parties to the arbitration agreement to participate in a time consuming and costly arbitration process. This is possible in instances, including but not limited to, where the claimant canvasses the adjudication of non-existent and mala fide claims through arbitration.*
>
> ***22.*** *With a view to balance the limited scope of judicial interference of the referral courts with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration. Having said that, it is clarified that the aforesaid is not to be construed as a determination of the merits of the matter before us, which the Arbitral Tribunal will rightfully be equipped to determine."*

13. In view of the aforesaid, the scope at the stage of Section 11 proceedings is akin to the eye of the needle test and is limited to the extent of finding a prima facie existence of the arbitration agreement and nothing beyond it. The jurisdictional contours of the referral Court, as meticulously delineated under the 1996 Act and further crystallised through a consistent line of authoritative pronouncements by the Supreme Court, are unequivocally confined to a prima facie examination of the existence of an arbitration agreement. These boundaries are not merely procedural safeguards but fundamental to upholding the autonomy of the arbitral process. Any transgression beyond this limited judicial threshold would not only contravene the legislative intent enshrined in Section 8 and Section 11 of the 1996 Act but also risk undermining the sanctity and efficiency of arbitration as a preferred mode of dispute resolution. The referral Court must, therefore, exercise

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restraint and refrain from venturing into the merits of the dispute or adjudicating issues that fall squarely within the jurisdictional domain of the arbitral tribunal. It is thus seen that the scope of enquiry at the referral stage is conservative in nature. A similar view has also been expressed by the Supreme Court in the case of ***Ajay Madhusudan Patel v. Jyotrindra S. Patel"****.*

9. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, Mr. Shantanu Sharma, Advocate (Mob No. +91 9755922222, Email- shantanusharma862@gmail.com) is appointed as the sole Arbitrator.

10. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "*A&C Act*").

11. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C 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/counterclaims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.

14. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.

15. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

MAY 13, 2025/aks/mj

Click here to check corrigendum, if any

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