



2025:DHC:4739



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 1826/2024**

Date of Decision: 26.05.2025

TOPLINE SOLUTIONS PVT LTDTHROUGH ITS DIRECTOR HAVING ITS REGISTERED
OFFICE AT A-1, FIRST FLOOR, MODEL TOWN-I,
DELHI-110009

.....Petitioner

(Through: Mr. Kunal Mehta, Adv. (Thr. VC))

versus

SAHIL DHAWAN

S/O LATE SH. SURESH KUMAR DHAWANRespondent No. 1

SMT. RITU DHAWAN

W/O LATE SH. SURESH KUMAR DHAWANRespondent No. 2

MS. SHEEBA DHAWAN

D/O LATE SH. SURESH KUMAR DHAWANRespondent No. 3

ALL R/O H. NO. 182, MANDI ROAD,
NEAR FAUJI GENERAL STORE,
DERA GAON HAUZ KHAS,
DELHI-110074*(Through: None.)***CORAM:****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****J U D G E M E N T****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. Heard learned counsel for the petitioner.
2. Learned counsel for the petitioner has placed the service affidavit dated 12.02.2025 on record which reads as under:

“1. That the deponent is the associate, Advocate working with the



R.K.Mehta & Co. having its office at Ch. No. 464-465, Civil Wing, Tis Hazari Courts, Delhi and Ch. No. 370, Delhi High Court, New Delhi.

2. That I am well conversant with the fact and circumstances of the present case. I am, as such, authorized and competent to swear and depose the present affidavit.

3. That this Hon'ble Court vide its order dated 21.11.2024 had ordered for issuance of summons to the respondents through all permissible modes and the summons were provided by the registry of this Hon'ble Court on 27.01.2025.

4. That the respondents were issued with the summons and copy of the petition along with documents through speed post dated 31.01.2025. The receipts of Speed Post are annexed herewith.

5. That in terms of the tracking report, the article dispatched through Speed post was refused by the respondents on 03.02.2025. The tracking reports are annexed herewith.

6. That the respondents were served with the summons, copy of the order dated 21.11.2024 along with the copy of the petition and documents via email on the available I registered email I.D of respondent no. 1 i.e. sahildhawan2@yahoo.co.in on 12.02.2025 and the same has been delivered and did not bounce back. A copy of the email effective the said service has been attached.

7. That the contents of paragraph nos. 1 to 6 herein above are true and correct and nothing material has been concealed therefrom."

3. It is, thus, seen that the respondents have refused to accept the registered post. In addition, in paragraph 6 of the service affidavit, it is stated that the notice was sent through E-mail Ids, whereby, all the respondents were communicated through the petitioner.

4. In view of the aforesaid facts and circumstances, the Court is satisfied that the service compliance has duly been made.

5. The petition is for the following reliefs:

"a) Pass an order appointing a sole arbitrator to adjudicate the disputes that have arisen between the parties, in exercise of this Hon'ble Court's jurisdiction under section 11(6) (b) of the Arbitration and Conciliation Act, 1996 ;

b) In view of the foregoing circumstances pass an order directing the Respondent to pay the costs of the present petition to the Petitioner; and Pass such other and/or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."



6. It appears that a consultancy agreement dated 25.08.2020 was executed between the petitioner and the respondent. As per the petition, in terms of the consultancy agreement, the petitioner sent various documents/letters to the respondent for the signatures for submitting the required documents/letter before the concerned authority for its liquidation but the respondent failed to send the signed documents/letters.

7. Further, petitioner contends that the respondents have also failed to clear the invoice dated 23.09.2022. The petitioner claims to have issued a legal notice on 24.05.2023 and, thereafter, invoked the arbitration clause.

8. However, despite the aforesaid steps, the petitioner claims that the respondents have not positively responded. Thereafter, the petitioner has approached this Court by way of the instant petition.

9. The arbitration clause i.e. Clause 6 of the agreement dated 25.08.2020 reads as under:

“6.Dispute/ Resolution: Any dispute, difference, controversy arising relating to the interpretation of this agreement shall be settled by as per mutual consent. If the parties are unable to resolve the dispute within thirty (30) days from the date of the letter calling for such negotiation by the parties, then either Party may refer such dispute to a sole Arbitrator mutually agreed in between the parties and in the event of dispute, the arbitration shall take place as per the provisions of Arbitration and Conciliation Act, 1996, the seat of Arbitration proceedings shall be at Delhi/ New Delhi.”

10. 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* 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 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.**, 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 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 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, Ms. Abhipriya, Advocate (Mobile No.7508549780, e-mail id: adv.abhipriya@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. 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



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

15. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

MAY 26, 2025

aks/mj

Click here to check corrigendum, if any