



2025:DHC:11206



\$~O-11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1796/2025**

Date of Decision: **28.11.2025****IN THE MATTER OF:**

CBRE SOUTH ASIA PVT. LTD.

.....Petitioner

Through: Mr. Pratik Malik, Mr. Priyam Kamra
& Mr. Amogh K. Singh, Advs.

versus

SPHERE AIR RESIDENCY MAINTENANCE SERVICE
ASSOCIATION

.....Respondent

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. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator in respect of disputes arising under Facility Services Agreement dated 24.07.2025 (*the Agreement*).
2. As per the affidavit of service filed by the petitioner, the respondent has been duly served. The said affidavit is reads as under: -

"I, Priyam Kamra, Advocate, aged about 27 years, having an office at 301, Competent House, Connaught Place, New Delhi do hereby solemnly affirm and declare as under:-

1. That I am counsel of the Petitioner and as such fully conversant with the facts and circumstances of the present case and as such competent to swear this affidavit. The accompanying petition has been prepared by me

Signature Not Verified

Signed By:AMIT KUMAR
SHARMA
Signing Date:11.12.2025
12:13:12

Signature Not Verified

Signed
By:PURUSHAINDRA
KUMAR KAURAV



under instructions from the Petitioner and the contents thereof are true and correct to the best of my knowledge and belief.

2. I say that I am filling this affidavit for stating on record that I have served Respondent with complete set of petition along with documents through speed post dated 17.11.2025 and the same was delivered on 20.11.2025. Copy of the speed post receipt is attached herewith as Annexure-A. Copy of the delivery report is attached herewith as Annexure-B.

3. I say that I have served the Respondent with complete set of Petition along with documents through Email to shailesh1926@yahoo.com and kgondalia@takshashilaair.com on 17.11.2025 through any official email id-p.kamra@copm.in, and same has not bounced back. Proof of Email service is attached herewith as Annexure-C.

4. I say that I have served the Respondent with complete set of Petition along with documents through Courier on 17.11.2025 and the same was delivered on 19.11.2025. Copy of the Courier receipt is attached herewith as Annexure-D. Copy of the delivery report is attached herewith as Annexure-E.

5. I say that the contents of the present affidavit are true and correct and nothing material has been concealed therefrom."

3. Despite service, no one appears on behalf of the respondent. Hence, the Court proceeds with the matter in its absence.

4. The case of the petitioner is that it was engaged by the respondent for providing property management services for the respondent's properties in Ahmedabad, Gujarat *vide* the Agreement. The petitioner claims that the respondent failed in its payment of consideration for the services rendered by the petitioner as per the terms of the Agreement, despite several invoices having been raised in this regard. Thereafter, the plaintiff has issued Legal Notice dated 21.02.2025 for recovery of the alleged dues along with a Reminder Notice dated 20.05.2025. However, the respondent is stated not to have complied with the said demands

5. Clause 25 of the Agreement provides for resolution of disputes by way of arbitration. The said clause reads as under: -

"Clause 25: Dispute Resolution Procedure



If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ('Dispute') then, either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ('Dispute Notice'), together with relevant supporting documents. On service of the Dispute Notice, the parties shall attempt in good faith to resolve the Dispute. If the parties are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be submitted to arbitration by a sole arbitrator, appointed by agreement between the parties, under the Arbitration And Conciliation Act, 1996. In the event the Parties are unable to agree on a sole arbitrator within 30 days of a notice of claim served on one party by the other, then each party shall appoint one arbitrator and the arbitrators so appointed shall appoint the third arbitrator. The place of arbitration shall be Delhi and the language of arbitration shall be in English."

2. 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***¹, has extensively dealt with the scope of interference at the stage of Section 11. Furthermore, in ***Axis Finance Limited v. Mr. Agam Ishwar Trimbak***,² 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 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)

¹ 2025 SCC OnLine Del 3022

² 2025:DHC:7477





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*³ 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

³ 2024 SCC OnLine SC 1754





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*⁴ 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 the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration

⁴ 2025 SCC OnLine SC 1471





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 Agreement, Mr. Yatin Sharma, Advocate (Mobile No.+91 98101 62206, e-mail id: yatin.sharma@aureuslaw.com) is appointed as the sole Arbitrator to adjudicate the dispute between the parties.

10. 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.

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



2025:DHC:11206



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

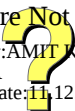
14. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 28, 2025/NG/AMG

Signature Not Verified

Signed By:AMIT KUMAR
SHARMA
Signing Date:11.12.2025
12:13:12



Signature Not Verified

Signed
By:PURUSHAINDRA
KUMAR KAURAV

