



2025:DHC:4740



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 1863/2024**

Date of Decision: 27.05.2025

**SUSTAINABLE ENGINEERING AND FARMING ALLIANCE
PRIVATE LIMITED**REGISTERED OFFICE AT PLOT NO. 7,
KH NO. 16/17, SHIVANI ENCLAVE,
RAJU EXTENSION, KAKROLA, DWARKA,
DELHI 110078

.....Petitioner

(Through: Mr. Kaveesh Nair and Ms. Aashna Mehra, Advs.)
versus**UMA SHANKAR SAHU**R/O SH. SAI SAMARTH, PLOT NO. 275,
SECTOR 31, R. NO. 401, NEAR
BHARAT SEVA ASHRAM VASHI, NAVI MUMBAI,
MAHARASHTRA 400703

.....Respondent

*(Through: Mr. Sanjay Kumar Sharma, Adv.)***CORAM:****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****J U D G E M E N T****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)****ARB.P. 1863/2024**

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the 1996 Act) by the petitioner, seeking appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties.
2. The facts of the case would indicate that the respondent was



appointed by the petitioner on 01.09.2022 and as Technical Manager under Grade TE2 by issuing a letter of employment. The terms of the employment agreement necessitated for a probation period of three months from the date of commencement ending on 01.12.2022.

3. The respondent, however, preferred a resignation by an E-mail dated 09.10.2023 with a notice period of merely 22 days instead of 60 days as according to learned counsel for the petitioner is in violation of the terms of the employment agreement.

4. The petitioner, however, relieved the respondent *vide* relieving letter dated 10.11.2023.

5. As per the case set up by the petitioner there has been multiple violation of confidentiality clause of the employment agreement.

6. The petitioner, thereafter, appears to have sent a legal notice dated 17.06.2024 to the respondent highlighting those violations and called upon the respondent to pay damages to the tune of Rs. 6 lakhs due to loss of potential customers and loss to the petitioner was issued. The respondent in response to the legal notice denied the allegations.

7. The petitioner, thereafter, appears to have invoked the clause no. 16 of the employment agreement which requires appointment of the arbitrator.

8. Despite, the aforesaid, the respondent has not acted positively and the petitioner has approached this Court by way of the instant petition.

9. In the instant petition, on notice being issued to the respondent, the respondent appears to have filed the reply. However, the same is still lying under objection.

10. Learned counsel for the respondent has been heard who contends that there lies no dispute, whatsoever. According to him, the dispute is not



arbitrable.

11. The Court has considered the aforesaid submissions and finds that in Clause 16 of the employment agreement, the parties mutually agreed for resolution of all disputes arising out of letter of employment. The Clause 16 of the employment agreement reads as under:

“16. Dispute Resolution

16.1 All disputes arising out of this Letter of Employment shall be referred to arbitration under the Arbitration and Conciliation Act, 1996 upon a written notice sent by either party. The arbitral tribunal shall consist of a sole arbitrator mutually appointed by the parties.

16.2 All disputes arising out of this Letter of Employment shall be subject to the jurisdiction of the Courts at New Delhi and that only the courts, tribunals and/ or authorities at New Delhi shall have jurisdiction to entertain, try and decide such disputes or differences arising out of or pertaining to this employment of employment, irrespective of your working being elsewhere at those times.”

12. It is seen that though, the respondent has resigned, the dispute which is raised by the petitioner concerns with the terms of letter of employment.

13. 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 of the 1996 Act. 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**".*

14. 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) as the Sole Arbitrator to adjudicate the dispute between the parties.
15. 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").
16. 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.
17. The parties shall share the arbitrator's fee and arbitral cost, equally.
18. 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.
19. 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 the copy of the said order be sent to the Arbitrator through the electronic mode as well.
20. Accordingly, the instant petition stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

MAY 27, 2025/aks/mj

[Click here to check corrigendum, if any](#)