



2025:DHC:11679



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 1848/2025**Date of Decision: **17.12.2025****IN THE MATTER OF:****TATA CAPITAL LIMITED TRANSFEREE OF TATA CAPITAL
FINANCIAL SERVICES LTD**PetitionerThrough: Mr. Sanidhya Sonthalia and Mr.
Kanishk Pandey, Advs.

versus

LATE MR HANS RAJ DECEASED AND ORSRespondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

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

2. Service affidavit filed by the petitioner reads as under:

"I, Sanidhya Sonthalia (Advocate), son of Sh. Sanjay Sonthalia, aged about 30 years, having office at 7 A, 7th Floor, Tower C, Max House, Okhla Industrial Area, Okhla Phase III, New Delhi - 110020, presently at New Delhi, do hereby, solemnly affirm and declare as under:

1. That I am working as an Associate in Argus Partners and deposing this affidavit.

2. That I am representing the Petitioner - Tata Capital Ltd. before this

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Hon'ble Court and as such am fully conversant with the facts and circumstances of the case for the purpose of filing of affidavit of service and I am fully competent to swear this affidavit of service on behalf of the Petitioner. The Petitioner has already executed the Vakalatnama in my favour.

3. That vide order dated 07.11.2025, this Hon'ble Court was pleased to issue notice on this matter to the Respondents by all permissible modes.

4. That the notice of the Arb. P. No. 1848 of 2025 along with complete paper book and documents were served upon the Respondents by registered post, courier, and email on the below mentioned addresses and the delivery status of the same as per tracking report is as under:

<i>Mode</i>	<i>Consignment no./Id</i>	<i>Respondent address</i>	<i>Date of dispatch</i>	<i>Delivery date and report</i>
<i>Speed Post</i>	ED863815370 IN	LATE MR. HANS RAJ (DECEASED) Through his legal heir: - A. MR. VISHAL ARORA 551, Gha/229 Kha, Nat Khera Road, Near Shivaji Medical Store, Jai Prakash Nagar, Alambagh, Lucknow, U.P. - 226 005.	15.11.2025	Delivered on 18.11.2025
<i>Speed Post</i>	ED863815383 IN	LATE MR. HANS RAJ (DECEASED) Through his legal heir:- 1 B. LATE MR. AJAY KUMAR ARORA (DECEASED) Through his legal heir:- 1 MR. NITIN ARORA 551, Gha/229 Kha, Nat Khera Road, Near Shivaji Medical Store, Jai Prakash Nagar, Alambagh, Lucknow, U.P. - 226 005.	15.11.2025	Delivered on 18.11.2025
<i>Speed Post</i>	ED863815264	MR. VISHAL ARORA 551, Gha/229 Kha, Nat Khera Road, Near Shivaji Medical	15.11.2025	Delivered on 18.11.2025

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		Store, J ai Prakash N agar, Alambagh, Lucknow, U.P. - 226 005.		
Speed Post	ED863815397 IN	LATE MR. AJAY KUMAR ARORA (Deceased) Through his Legal Heir:- MR. NITIN ARORA 551, Gha/229 Kha, Nat Khera Road,	15.11.2025	Delivered on 18.11.2025
Speed Post	ED863815131 IN	SHAKTI AUTO SPARES 10, Cantt. Road, Shop G4, Near Shubham Cinema, Lucknow, U.P. - 226 001	15.11.2025	Delivered on 18.11.2025
Courier	264398701	LATE MR. HANS RAJ (DECEASED) Through his legal heir:- A. MR. VISHAL ARORA 551, Gha/229 Kha, Nat Khera Road, Near Shivaji Medical Store, Jai Prakash Nagar, Alambagh, Lucknow, U.P. - 226 005.	14.11.2025	Delivered on 16.11.2025
Courier	264398702	LATE MR. HANS RAJ 14.11.2025 (DECEASED) Through his legal heir:- B. LATE MR. AJAY KUMAR ARORA (DECEASED) Through his legal heir:MR. NITIN ARORA 551, Gha/229 Kha, Nat Khera Road, Near Shivaji Medical Store, J ai Prakash N agar, Alambagh, Lucknow, U.P. - 226 005.	14.11.2025	Delivered on 16.11.2025
Courier	264398703	MR. VISHAL ARORA 551, Gha/229 Kha, Nat Khera Road, Near Shivaji Medical Store, J ai Prakash N agar, Alambagh,	14.11.2025	Delivered on 16.11.2025

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		Lucknow U.P. - 226 005.		
Courier	264398704	LATE MR. AJAY KUMAR 14.11.2025 ARORA (Deceased) Through his Legal Heir: - MR. NITIN ARORA 551, Gha/229 Kha, Nat Khera Road, Near Shivaji Medical Store, Jai Prakash Nagar, Alambagh, Lucknow, U.P. - 226 005	14.11.2025	Delivered on 16.11.2025
Courier	Z64398705	SHAKTI AUTO SPARES 10, Cantt. Road, Shop G4, Near Shubham Cinema, 17.11.2025 Lucknow, U.P. - 226 001	14.11.2025	Delivered on 17.11.2025
Email		shaktiauto@gmail.com; nitinarora786@gmail.com	18.11.2025	Delivered on 18.11.2025

Copy of the Notices, Original Registered Post receipts and tracking reports are annexed as Annexure - A (Colly).

Copy of the Notices, Original courier receipts and tracking reports are annexed as Annexure - B (Colly).

Copy of notice along with email dated 18.11.2025 issued to the Respondents is annexed as Annexure - C (Colly).

5. Hence, I say that the order dated 07.11.2025 passed by this Hon'ble Court in the present matter has duly been complied with.

6. I say that the contents of the present Affidavit are true and correct to the best of my knowledge, based on records and nothing material has been concealed therefrom."

3. It is, thus, seen that none appears on behalf of the respondent despite service. Accordingly, the Court is to proceed with the matter.

4. The facts of the case would indicate that the dispute has arisen with respect to a Term Loan Agreement dated 27.12.2019. The respondent appears to have availed a personal loan under the loan agreement, and thereafter, has defaulted in repayment. Clause 13 of the said agreement

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provides for resolution of dispute through arbitration, and the same is extracted as under:

“13. Arbitration

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitrator to be held at the place as mentioned at Serial No. 18 of Annexure 1 hereto, in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the Obligors.”

5. 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 Ltd***¹, as well, has extensively dealt with the scope of interference at the stage of Section 11. Furthermore, this Court, recently, in ***Axis Finance Limited v. Mr. Agam Ishwar Trimbak***² has held that the scope of inquiry under Section 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 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

¹ 2025 SCC OnLine Del 3022

² 2025:DHC:7477



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.



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

³ 2024 SCC OnLine SC 1754



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 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

⁴ 2025 SCC OnLine SC 1471



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.”

6. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, this Court appoints Mr. Udai Khanna, Adv. (Mobile No. +91 95409 54431, e-mail id: udai.khanna@gmail.com) as the Sole Arbitrator.

7. 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.

8. 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.

9. All rights and contentions of the parties in relation to the



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claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

10. 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.

11. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J
DECEMBER 17, 2025/p/KSR

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