



2025:DHC:11918



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1967/2025**

Date of Decision: **12.12.2025**

IN THE MATTER OF:

CDL FINANCIAL SERVICES PVT LTD

.....Petitioner

Through: **Mr. Gurpreet Singh Gulati and Ms. Monika, Advs.**

versus

VIJAY PAL & ORS.

.....Respondents

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 (*the Act*), seeking appointment of an Arbitrator, to adjudicate upon the disputes that have arisen between the parties.
2. The affidavit of service has been placed on record and the same is extracted as under:

"I, Gurpreet Singh Gulati, Advocate Office at: G-205, Karkardooma Courts, Delhi – 110032, do hereby solemnly affirm and declare as under:

1. *That the Deponent is the Counsel for the Petitioner in the aforesaid case and is well conversant with the facts and circumstances of the case.*
2. *That all the Respondents have been duly served with the Notice of the present case along with complete set of present petition on their respective*

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2025:DHC:11918



address on 08.12.2025 by way of Speed Post vide postal receipt no. SU0026219261N, SU0026219301N, and SU0026219431N all dated 05.12.2025. 3. That the Original Postal Receipts and their respective tracing reports have been annexed along with this present affidavit. \4. That this is my true statement."

3. It is seen that despite service, none appears on behalf of the respondents. Accordingly, the Court proceeds with the matter.
4. The petitioner's case is that it had advanced a loan of Rs.10,52,551/- (Rupees Ten Lakh Fifty-Two Thousand Five Hundred and Fifty-One only) to the respondents, for a period of eighty-four months. Towards the same, the parties are stated to have executed Loan Agreement dated 30.10.2023 (*the Agreement*). The petitioner claims that the respondents have not adhered to financial discipline and have been defaulting in their repayments since 10.12.2024, leading to outstanding dues of Rs.13,37,630/- (Rupees Thirteen Lakh Thirty-Seven Thousand Six Hundred and Thirty only) as on 10.10.2025.
5. Clause 19 of the Agreement, which provides for resolution of disputes by way of the arbitration, is extracted below, for reference:

"19. The parties to the Loan undertake that:

a) All Disputes, differences and/or claim out of this Agreement whether during subsistence or thereafter shall be settled by arbitrator in accordance with the provisions of the Arbitrator and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to the Sole Arbitration of an Arbitrator to be nominated by the CDFSL Pvt. Ltd. The award given by such an Arbitrator shall be final and binding on the Borrower to this Agreement. It is a term of this agreement that in the event of such an arbitrator to whom the matter has been originally referred dying or being unable to act for any reason, the Director of the Lender shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

b) Upon such dispute CDLFS Pvt. Ltd may give 15 days' notice of their intention to make the reference to the Borrower(s). Such notice shall be addressed to the last known address and the notice shall be deemed to

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2025:DHC:11918



have been served when it would have been normally delivered. On the expiry of said period of 15 days, CDFS Pvt Ltd., in case their dispute does not settle then, may give reference of the dispute to the Arbitrator and the same shall be binding upon the Borrower(s) and whose decision by way of award shall be final and binding upon both the parties.

c) Any notice by the Arbitrator to the respondents shall be sent by registered post at the address mentioned in the agreement or to any changed address duly intimated in writing by the borrower will be deemed to be sufficient notice to the parties. The cost and expenses of the arbitration proceedings shall be borne by both the parties. The Sole Arbitrator shall conduct the arbitration proceedings at the place and location to be decided by CDLFS Pvt Ltd and shall be binding on the borrower. It is also mutually agreed between the parties that the terms of the Arbitration shall survive even after end of the Loan Agreement by efflux of time, loan maturity, termination, recall of loan facility and/or any such reason whatsoever. It is also agreed between the parties that arbitration proceeding would be conducted in English only and in no other language.”

6. 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 of the Act. Furthermore, in ***Axis Finance Limited Vs. 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

¹ 2025 SCC OnLine Del 3022

² 2025:DHC:7477



2025:DHC:11918



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.

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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.”

7. Considering the fact that disputes have arisen between the parties and there is an arbitration clause in the Agreement, there is no impediment in the appointment of the Sole Arbitrator.

9. Accordingly, Mr. Rohit Gandhi (Mobile No.9818610321, e-mail id: rohit@gandhipartners.com) is appointed as the sole Arbitrator.

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 reference.



2025:DHC:11918



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

DECEMBER 12, 2025

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