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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 3/2025**

Date of Decision: **16.09.2025**

IN THE MATTER OF:

MONEYWISE FINANCIAL SERVICES PVT LTD
THROUGH ITS AUTHORIZED REPRESENTATIVE
SH. HIMANSHU KUMAR
11/6-B, 2ND FLOOR, SHANTI CHAMBER,
PUSA ROAD, NEW DELHI-110005.

.....PETITIONER

Through: Mr.Ranjeet Kumar, Adv.

versus

1. **MUSKAN ENGINEERING**
THROUGH ITS PROPRIETOR
Vs.
MRSONU KUMAR S/O RAJ KAUMR
OFFICE AT:-
E-122 B, BULAND SHAHAR ROAD, INDL AREA, GHAZIABAD,
UTTAR PRADESH- 201001
2. **MR.SONU KUMAR**
S/O RAJ KAUMR SINGH
R/O: - A-595, SECTOR-9, NEW VIJA Y NAGAR,
NEAR, SHIV MANDIR, GHAZIABAD,
UTTAR PRADESH- 201001.
3. **MRS. REENA RANI**
W/O SONU KUMAR
R/O:- A-395, SECTOR-9, NEW VLJA Y NAGAR,
NEAR, SHIV MANDIR, GHAZIABAD,
UTTAR PRADESH- 201001.



ALSO AT:-

MRS. REENA RANI

W/O SONU KUMAR

35, AHATA ATMA RAM, GHAZIABAD.

UTTAR PRADESH- 201001

.....RESPONDENTS

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. 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. On 07.01.2025, this Court directed issuance of notice to the respondents, subject to the petitioner taking necessary steps.
3. Thereafter, as notice could not be served upon the respondents at their available address, the petitioner was permitted to effect substituted service by order dated 22.04.2025, which is reproduced below:

“I.A. 6513/2025 (under Order V Rule 20 read with Section 151 of the CPC, 1908 for substituted service of respondents)

1. For the reasons stated in the application, the same stands allowed and the petitioner is also permitted to serve the respondents through substituted service by way of publication, in a leading English and Hindi newspaper.

2. Let requisites be filed within a period of two working days from today. The necessary notice shall be handed over within two working days thereafter.

3. I.A. stands disposed of.

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4. List on 16.09.2025.”

4. In pursuance to the liberty granted by the Court, learned counsel for



the petitioner submits that he has filed service affidavit which is extracted as under:

“AFFIDAVIT

I, Ranjeet Kumar, S/o- Surender Prasad, Aged about 38, Counsel for the Petitioner Company, Having Chamber No. 164, Civil Wing, Tis Hazari Courts, Delhi – 110054, do hereby solemnly affirm as under:

- 1. That I am the Counsel for the Petitioner Company in the present petition and as such I am fully competent to swear this affidavit.*
- 2. That this Hon'ble Court, vide its Order dated 24.04.2025, was pleased to direct the publication of a notice in the newspapers ' The Statesman ' and 'Rashtriya Sahara' as per the terms stated in the said Order.*
- 3. That I have complied with the aforesaid direction and have caused the notice to be published in the newspapers as follows:*
 - a. English edition - The Statesman on 11.09.2025*
 - b. Hindi edition - Rashtriya Sahara on 11.09.2025”*

4 That the copies of the said newspaper publications are annexed hereto and marked as Annexure “A”.

*-sd-
DEPONENT”*

5. As per the affidavit on record, the notice in the instant matter was published in the English edition of *The Statesman* and the Hindi edition of *Rashtriya Sahara* on 11.09.2025.

6. In view of the above, the Court is satisfied that service has been duly effected. The matter is, therefore, taken up for consideration on merits.

7. The facts of the case reveal that a Master Loan Agreement was executed between the petitioner and the respondents on 28.02.2021, for a loan facility of Rs.20,34,449/- to be utilized for the expansion of the respondents' business.

8. It is contended that the respondent No. 2 and respondent No. 3 stood as co-borrowers/co-applicants under the said loan agreement and are stated



to be jointly and severally liable for the repayment of the outstanding amount i.e Rs. 28,19,068/-.

9. It is the petitioner's case that the said loan amount was disbursed to the respondents, who subsequently defaulted in repayment. Consequently, the petitioner issued a Loan Recall Notice / Termination of Agreement dated 30.06.2022 and also initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881, owing to dishonour of cheques issued by the respondents.

10. Learned counsel for the petitioner submits that the arbitration clause under the agreement has been invoked, and in view of Clause 8.2 of the Loan Agreement, the present petition has been filed seeking appointment of an Arbitrator. Clause 8.2 of the agreement is reproduced below:

"8.2. Arbitration: Any disputes, differences, controversies and questions directly or indirectly arising at any time hereafter between the Parties or their respective representatives or assigns. arising out of or in connection with this Agreement (or the subject matter of this Agreement), including, without limitation, any question regarding its existence, validity, interpretation, construction, performance, enforcement, rights and liabilities of the Parties. or termination ("Dispute"), shall be referred to a sole arbitrator duly appointed by the Lender. The language of the arbitration shall be English. The seat of the arbitration shall be at New Delhi and the Language of proceedings shall be English. The award rendered shall be in writing and shall set out the reasons for the arbitrator's decision. The cost and expenses of the arbitration shall be borne equally by each Party, with each Party paying for its own fee,; and costs including attorney fees, except as may be determined by the arbitration tribunal. Any award by the arbitration tribunal shall by arbitration and binding."

11. 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 Ltd¹, as well, has extensively dealt with the scope of interference at the stage of Section 11. Furthermore, this Court, recently, in ***Axis Finance Limited Vs. 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 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) 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

¹ 2025 SCC OnLine Del 3022

² 2025:DHC:7477



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 competence-competence, 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 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.

³ 2024 SCC OnLine SC 1754

⁴ 2025 SCC OnLine SC 1471



(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 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.”



12. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the contract, this Court appoints Ms. Diksha Punia, Advocate (Phone no- +91 9958535104, Email Id- advdikshapunia@zohomail.in) as the sole Arbitrator.

13. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12 of the Act.

14. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the Act or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

15. The parties shall share the arbitrator's fee and arbitral cost, equally.

16. 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.

17. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy. All rights and contentions of the parties in this regard are reserved. Let the copy of the said order be sent to the appointed Arbitrator through the electronic mode as well.

18. Accordingly, the instant petition stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 16, 2025
aks/sph