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

+ **ARB.P. 2071/2025**

INNOVATIVIEW INDIA LTD

.....Petitioner

Through: Mr. Prakash Singh, Adv.

versus

GOVT OF NCT OF DELHI & ANR

.....Respondents

Through: Mr. Rajeev Sharma, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **17.12.2025**

1. This Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the E-Tender dated 17.12.2019 and Work Order dated 01.02.2020.
2. It is stated that under the said Work Order, the Petitioner herein was entrusted with the work of providing videography, photography, and webcasting services during the Delhi Legislative Assembly Elections, 2020.
3. It is stated that disputes arose between the parties regarding payment of money.
4. It is stated that Clause 11.4 of the E-tender contains an Arbitration Clause which provides that disputes arising between the parties under the Agreement shall be decided by means of Arbitration and the seat of Arbitration shall be Delhi.



5. It is stated by the learned Counsel for the Petitioner that as on date Rs.2,24,21,169/- is due and payable by the Respondent.
6. It is stated that Notice under Section 21 of the Arbitration Act was issued by the Petitioner on 21.05.2025. It is stated that since the Respondent has failed to appoint the arbitrator within the stipulated time, the Petitioner has approached this Court by filing the present Petition.
7. It is stated by the learned Counsel for the Respondent No.2 that the claim of the Petitioner is barred by limitation, inasmuch as the Work Order was issued in 2020 whereas the Notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued on 21.05.2025.
8. It is to be kept in mind that in wake of the COVID-19 pandemic, the period from 15.03.2020 to 28.02.2022 was excluded from computation of limitation in terms of the judgment of the Apex Court in Cognizance for Extension of Limitation, In re, (2022) 3 SCC 117.
9. Moreover, it is settled law that the referral Court under Section 11 of the Arbitration & Conciliation Act, 1996, has to only examine the *prima facie* existence of an arbitration agreement and the determination of the substantive rights, maintainability of claims, and the issue of limitation etc., should be left to the Arbitral Tribunal. The Apex Court in Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1, has observed as under:-

“163. We are of the opinion that the above premise of the Court in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] is erroneous because the omission of Section 11(6-A) has not been notified and, therefore, the said provision continues to remain in full force. Since Section 11(6-A) continues to remain in force, pending



the notification of the Central Government, it is incumbent upon this Court to give true effect to the legislative intent.

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 Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] 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(6-A) 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 [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 :



(2017) 4 SCC (Civ) 764] , 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(6-A) 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 [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] 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 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. This position of law**



can also be gauged from the plain language of the statute.

167. Section 11(6-A) 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 scrutinise 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.** [P. Ramanatha Aiyar, *The Law Lexicon* (2nd Edn., 1997) 666.] **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.* [*Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*, (2005) 7 SCC 234]**

168. In *Shin-Etsu* [*Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*, (2005) 7 SCC 234] , this Court was called upon to determine the nature of adjudication contemplated by unamended Section 45 of the Arbitration Act when the objection with regards to the arbitration agreement being “null and void, inoperative or incapable of being performed” is raised before a judicial authority. Writing for the majority, B.N. Srikrishna, J. held that Section 45 does not



require the judicial authority to give a final determination. The Court observed that : (SCC p. 267, para 74)

“74. There are distinct advantages in veering to the view that Section 45 does not require a final determinative finding by the Court. First, under the Rules of Arbitration of the International Chamber of Commerce (as in force with effect from 1-1-1998), as in the present case, invariably the Arbitral Tribunal is vested with the power to rule upon its own jurisdiction. Even if the Court takes the view that the arbitral agreement is not vitiated or that it is not invalid, inoperative or unenforceable, based upon purely a prima facie view, nothing prevents the arbitrator from trying the issue fully and rendering a final decision thereupon. If the arbitrator finds the agreement valid, there is no problem as the arbitration will proceed and the award will be made. However, if the arbitrator finds the agreement invalid, inoperative or void, this means that the party who wanted to proceed for arbitration was given an opportunity of proceeding to arbitration, and the arbitrator after fully trying the issue has found that there is no scope for arbitration. Since the arbitrator's finding would not be an enforceable award, there is no need to take recourse to the judicial intercession available under Section 48(1)(a) of the Act.”

169. *When the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award will be 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. Such a legal approach will*



help the Referral Court in weeding out prima facie non-existent arbitration agreements. It will also protect the jurisdictional competence of the Arbitral Tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement.”

(emphasis supplied)

10. Similarly, the Apex Court in SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754, has observed as under:-

“122. Once an arbitration agreement exists between parties, then the option of approaching the civil court becomes unavailable to them. In such a scenario, if the parties seek to raise a dispute, they necessarily have to do so before the arbitral tribunal. The arbitral tribunal, in turn, can only be constituted as per the procedure agreed upon between the parties. However, if there is a failure of the agreed upon procedure, then the duty of appointing the arbitral tribunal falls upon the referral court under Section 11 of the Act, 1996. If the referral court, at this stage, goes beyond the scope of enquiry as provided under the section and examines the issue of “accord and satisfaction”, then it would amount to usurpation of the power which the parties had intended to be exercisable by the arbitral tribunal alone and not by the national courts. Such a scenario would impeach arbitral autonomy and would not fit well with the scheme of the Act, 1996.

125. We are also of the view that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court.



If the referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material.”

11. Since it is well-settled that referral courts should normally follow the policy of ‘when in doubt, refer’ and in view of the fact that disputes have certainly arisen between the parties, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

12. Accordingly, Mr. Harkirat Sawhney, Advocate (Mob. No: 9810000381) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

13. 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.

14. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within two weeks of entering on reference.

15. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

16. It is made clear that nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

17. It is further made clear that the observations made in this Order are



squarely limited to the appointment of an Arbitrator. Needless to say, it is open for the Respondent to urge its contention regarding limitation before the Arbitrator.

18. The petition stands disposed of in the above terms, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 17, 2025

Rahul