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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 67/2025

PRASAR BHARATI (BROADCASTING CORPORATION OF
INDIA)Petitioner

Through: Mr. Abhishek Birthray, Advocate.

versus

M/S PAS INTERNATIONAL AND ORSRespondents

Through: Ms. Anusuya Salwan, Mr. Rachit
Wadhwa and Mr. Bankim Garg, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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21.08.2025

I.A. 626/2025

1. This application is filed on behalf of the Petitioner under Section 151 CPC seeking condonation of delay of 24 days in refiling this petition.
2. For the reasons stated in the application, the same is allowed condoning delay of 24 days in refiling this petition.
3. Application stands disposed of.

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4. This petition is filed on behalf of the Petitioner under Section 11 of Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of the Arbitrator on account of the fact that the learned Arbitrator appointed on 02.08.2023 has recused himself.
5. Ms. Salwan, learned counsel for the Respondents submits that the claims of the Petitioner are *ex facie* time barred, however, in light of the



judgment of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754***, Respondents are not agitating this issue in the present petition and their rights be reserved to take this objection before the learned Arbitrator. She further urges that Respondents be also given the liberty to raise the issue of validity of the disputes set forth by the Petitioner, before the Arbitrator, in view of the decision of the Supreme Court in ***Goqii Technologies Private Limited v. Sokrati Technologies Private Limited, 2024 SCC OnLine SC 3189***. Counsel for the Petitioner, on instructions, does not oppose these submissions.

6. As fairly conceded by Ms. Salwan, the question of the claims being *ex facie* time barred is to be left for determination by the Arbitrator and in this context, I may allude to relevant passage from the judgment in ***Krish Spinning (supra)***, which is extracted hereunder, for ready refence:-

“133. Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the Act, 1996, the referral court should limit its enquiry to examining whether Section 11(6) application has been filed within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in Arif Azim (supra). As a natural corollary, it is further clarified that the referral courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time barred and should leave that question for determination by the arbitrator. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and also to the view taken in In Re : Interplay (supra).”

7. Similarly, determination of the validity of the disputes sought to be referred to arbitration is also within the remit of the Arbitrator and beyond the scope of jurisdiction of a referral Court under Section 11 of 1996 Act. This position is palpably clear from the judgment in ***Goqii Technologies (supra)***, relevant passages from which are as follows:-



“18. In a recent pronouncement, relying on the Constitution Bench judgment of this Court in Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] , this Court in SBI General Insurance Co. Ltd. v. Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754 : 2024 INSC 532] , summarised the law on the scope and standard of judicial scrutiny that an application under Section 11(6) of the 1996 Act can be subjected to. The relevant parts are produced hereinbelow : (Krish Spg. case [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754 : 2024 INSC 532] , SCC paras 117 & 128)

“117. In view of the observations made by this Court in Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] , 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 [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] and adopted in NTPC Ltd. v. SPML Infra Ltd. [NTPC Ltd. v. SPML Infra Ltd., (2023) 9 SCC 385 : (2023) 4 SCC (Civ) 342] 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 Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] .

128. 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.”



(emphasis supplied)”

19. *The scope of inquiry under Section 11 of the 1996 Act is limited to ascertaining the prima facie existence of an arbitration agreement. In the present case, the High Court exceeded this limited scope by undertaking a detailed examination of the factual matrix. The High Court erroneously proceeded to assess the auditor's report in detail and dismissed [Gogii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd., 2024 SCC OnLine Bom 3530] the arbitration application. In our view, such an approach does not give effect to the legislative intent behind the 2015 Amendment to the 1996 Act which limited the judicial scrutiny at the stage of Section 11 solely to the prima facie determination of the existence of an arbitration agreement.*

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.*

23. *The existence of the arbitration agreement in Clause 18.12 of the MSA has not been disputed by the respondent. The question whether there exists a valid dispute to be referred to arbitration can be addressed by the Arbitral Tribunal as a preliminary issue.”*

8. Learned counsel for the Petitioner fairly concedes that the existing arbitration clause between the parties envisages appointment of an Arbitrator by Director General, Doordarshan, which being unilateral appointment will be in the teeth of the judgments of the Supreme Court in **Perkins Eastman**



Architects DPC and Another v. HSCC (India) Limited, (2020) 20 SCC 760 and *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) a Joint Venture Company, 2024 SCC OnLine SC 3219* and therefore considering that arbitral proceedings have already been prolonged, this Court may appoint a Sole Arbitrator, to which Ms. Salwan has no objection.

9. With the consent of the parties and as proposed by them, Ms. Justice Reva Khetrpal, former Judge of this Court (Mobile No. 9871300030) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. As agreed, fee of the Arbitrator shall be fixed as per Fourth Schedule of 1996 Act.

10. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

11. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open. It is left open to the Respondents to raise the issues of the claims of the Petitioner being allegedly *ex facie* time barred as also the validity of the disputes sought to be referred, before the learned Arbitrator.

12. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 21, 2025/shivam