



2025:DHC:7907



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

+ **ARB.P. 155/2025**

Date of Decision: **28.08.2025**

IN THE MATTER OF:

M/S COLOR PALETTE PVT LTD
HAVING REGISTERED OFFICE AT
ORCHID ONE, A-5, FIRST FLOOR,
SECTOR 57 NOIDA, UTTAR PRADESH
201301 THROUGH ITS DIRECTOR MR.
NAVEEN CHAUHAN

..... PETITIONER

Through: Ms.Mayuri Raghuvanshi, Mr.Viom
Raghuvanshi, MS.Akanksha Rathore
and Mr.Jinod Pal, Advocates.

Versus

M/S BULLMEN REALTY INDIA PVT LTD
HAVING REGISTERED OFFICE AT
PLOT NO. 9, 2ND FLOOR, SECTOR -125,
NOIDA 201303 THROUGH ITS
DIRECTOR MR. ANKUSH JAIN

.... RESPONDENT

Through: Mr.Arjun Sanjay, Advocate.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (1996 Act), seeking appointment of



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an Arbitrator to adjudicate upon the disputes that have arisen between the parties under the Lease Deed dated 27.12.2021 (*lease deed*) and the Maintenance Agreement dated 27.12.2021 (*maintenance agreement*).

2. The case of the petitioner is that the petitioner owns the property bearing A-5, Orchid One, First Floor, Sector 57 Noida, Uttar Pradesh and constructed a multi-storied building named “ORCHID ONE” in compliance with all applicable laws having a super area of approximately 22500 square feet comprising of basement, ground floor, first floor, second floor, third floor (hereinafter as “building”). According to the petitioner, the respondent took a lease for 7500 square feet (super area) of fully furnished office space comprising of the 2nd floor and 3rd floor in the building under the lease deed for a sum of Rs. 3,75,000 (Rupees Three Lakh Seventy-Five Thousand Only) per month with a three years’ lock-in period until 20.02.2025.

3. The petitioner alleges that the respondent breached the lease and maintenance agreement by terminating the lease permanently by email dated 23.03.2024 and vacating the premises without paying dues for rent, maintenance, electricity and other charges. The petitioner, therefore, had issued a Legal Notice demanding Rs.1,62,56,286/- as on that date as rent and damages for the lock in period and also invoked arbitration on 04.04.2024 proposing appointment of an independent arbitrator as per the agreed procedure.

4. Since, the respondent did not come forward to appoint the arbitrator, therefore, the petitioner has approached this Court.



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5. On notice being issued, the respondent has filed its reply and one of the objections by learned counsel for the respondent is on this Court's territorial jurisdiction to hear a petition under Section 11 of the 1996 Act. According to him, both the parties have their registered offices outside the territorial jurisdiction of this Court and have executed the document the subject matter of adjudication, at Noida. He further submits that even the property situates outside the territorial jurisdiction of this Court.

6. Learned counsel for the respondent has placed reliance on a decision of the Supreme Court in the case of **Ravi Ranjan Developers vs. Aditya Kumar Chatterjee**¹ and he submits that in almost similar circumstances, the Court has opined that designation of a particular 'place of sitting' will not confer the jurisdiction to the Court within whose territorial jurisdiction, such place falls. He has placed specific reliance on paragraph nos.3, 20, 40, 41, 43, 44, and 46 thereof, which read as under:-

“3. The Appellant and the Respondent entered into a Development Agreement dated 15th June 2015 for development of property situated at Muzaffarpur in Bihar measuring about 12 Kaithas and 11 Dhurs, more fully described in the said Development Agreement, outside the jurisdiction of Calcutta High Court. The said Development Agreement executed and registered in Muzaffarpur in Bihar, contains an arbitration clause, which is set out hereinbelow for convenience:

“37. That in case of any dispute or difference between the parties arising out of and relating to this development agreement, the same shall be settled by reference of the disputes or differences to the Arbitrators appointed by both the parties and such Arbitration shall be conducted under the provisions of the Indian Arbitration and Conciliation Act,

¹ 2022 SCC OnLine SC 568



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1996 as amended from time to time and the sitting of the said Arbitral Tribunal shall be at Kolkata.”

20. The question in this case is, whether the Calcutta High Court had territorial jurisdiction to pass the impugned orders. The answer to the question has to be in the negative for the reason that the Development Agreement was admittedly executed and registered outside the jurisdiction of the High Court of Calcutta, the agreement pertains to development of property located in Muzaffarpur outside jurisdiction of the Calcutta High Court. The Appellant has its registered office in Patna outside the jurisdiction of Calcutta High Court. The Appellant has no establishment and does not carry on any business within the jurisdiction of the Calcutta High Court. As admitted by the Respondent, no part of the cause of action had arisen within the jurisdiction of Calcutta High Court.
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40. In Hindustan Construction Company Limited (supra), this Court held that once the seat of arbitration is designated, the same operates as an exclusive jurisdiction clause and only Courts within whose jurisdiction the seat was located, would have jurisdiction to the exclusion of all other Courts. In the facts and circumstances of that case this Court found that Courts at New Delhi alone would have jurisdiction for the purpose of challenge to the Award.

41. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. The judgment has to be construed in the backdrop of the facts and circumstances in which the judgment has been rendered. Words, phrases and sentences in a judgment, cannot be read out of context. Nor is a judgment to be read and interpreted in the manner of a statute. It is only the law as interpreted by in an earlier judgment, which constitutes a binding precedent, and not everything that the Judges say.

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43. This Court has perused the Development Agreement. The contention of the Respondent in the Affidavit in Opposition, that the parties to the arbitration agreement had agreed to submit to the jurisdiction of Calcutta High Court, is not correct. The parties to the arbitration agreement only agreed that the sittings of the Arbitral Tribunal would be in Kolkata. Kolkata was the venue for holding the sittings of the Arbitral Tribunal.



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44. In Union of India v. Hardy Exploration and Production (India) Inc.⁶ a three Judge Bench of this Court held that the sittings at various places are relatable to venue. It cannot be equated with the seat of arbitration or place of arbitration, which has a different connotation.

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46. In this case, the Development Agreement provided that the sittings of the Arbitral Tribunal would be conducted in Kolkata. As observed above, the parties never agreed to submit to the jurisdiction of Calcutta High Court in respect of disputes, nor did the parties agree upon Kolkata as the seat of arbitration. Kolkata was only the venue for sittings of the Arbitral Tribunal.”

7. *Per contra*, learned counsel for the petitioner submits that if the arbitration clause which requires consideration in the instant case is perused carefully, it would clearly indicate that the parties had voluntarily agreed for the place of mediation at New Delhi. She submits that the word ‘place’ is construed to be the juridical seat for an arbitration, as has been held by this Court in the case of **Cinepolis India Pvt Ltd v. Celebration City Projects Pvt Ltd and Anr.**² She has placed reliance specifically on paragraph no.19, 21, and 29 thereof. Additionally, she has also placed reliance on a decision of the Supreme Court in the case of **BGS SGS SOMA JV vs. NHPC Ltd.**³

8. I have heard learned counsel appearing on behalf of the parties and also perused the record.

9. For the sake of clarity, the relevant clause i.e. Clause 12.3 and 12.4 of the lease deed are extracted as under:-

“12.3 Any Dispute that is not settled to the satisfaction of the Parties

² 2020:DHC:410

³ (2020) 4 SCC 234



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under Article 12.2 above shall be finally resolved by arbitration in accordance with the Indian Laws of Arbitration. The Parties shall appoint a sole arbitrator by the mutual consent failing which Court of Law may appoint the arbitrator.

12.4 The Arbitration proceedings will be conducted in accordance with the Arbitration and Conciliation Act, 1996. The place of arbitration shall be New Delhi. All arbitration proceedings shall be conducted in the English language. The arbitrator(s) shall decide any such dispute or claim strictly in accordance with the governing law specified in Article 12. Judgement upon any arbitral award rendered hereunder may be entered in any Court having jurisdiction in New Delhi, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.”

Emphasis supplied

10. Clause 7 of the maintenance agreement is extracted as under:-

“7. ARBITRATION

It is further agreed that if any dispute arises between the First Party and the Second Party the same shall be referred for arbitration of a arbitrator. All the proceedings will be conducted as per the Arbitration and Conciliations Act 1996, and the award passed by the arbitrator shall be final and binding on the parties. The language of arbitration shall be in English only. All disputes shall have the jurisdiction of the New Delhi courts only.”

11. Clause 12.4 of the lease deed would clearly indicate that the arbitration proceedings have been agreed to be in accordance with the 1996 Act, and the place of arbitration has been decided to be at New Delhi.

12. This Court, in its decision in the case of ***Cinepolis India Pvt Ltd v. Celebration City Projects Pvt Ltd and Anr*** considered almost similar clauses which finds place in paragraph no.19 thereof, which is extracted as under:-



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19. The first issue that needs to be decided in the present petition is whether this Court has Territorial Jurisdiction to entertain the present petition. In order to decide the said controversy it is important to extract the relevant clause of the agreement between the parties, being Clause 12.9, which reads as under :

“12.9 Governing law and dispute resolution

This Agreement is governed by and is to be construed in accordance with the Laws of India. All notices required to be issued under this Agreement shall be addressed to the Parties at the addresses mentioned hereinabove and shall be issued in English language.

Courts in Ghaziabad shall have exclusive jurisdiction on the subject matter of this Agreement.

(ii) All disputes or differences between Parties in respect of or concerning or connected with the interpretation or implementation of this Agreement or arising out of this Agreement shall be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof. The reference shall be to a sole arbitrator. In the event of the Parties not being able to agree on the name of a sole arbitrator each party hereto shall be entitled to appoint one arbitrator each and the two duly appointed arbitrator shall appoint the third arbitrator who shall act as the presiding arbitrator (“Arbitrators”). The Parties shall be bound by the nomination of the presiding Arbitrator. Unless otherwise agreed to between the Parties. The arbitration proceedings shall be conducted in English language. The place of the Arbitration shall be at New Delhi.”

Emphasis supplied

13. In almost similar circumstances, this Court in paragraph nos.21 and 29 has held as under:-

“21. Having examined the respective contentions of the parties on this issue, I am of the view that there is no merit in the contention of the respondents. A bare perusal of the arbitration clause shows that the parties have clearly designated New Delhi as the place for arbitration proceedings. While it is true that the arbitration clause does not specifically use the word “seat” but it is no longer res integra that the



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term “place” would be the “juridical seat” for the purpose of Section 2(2) of the Act. It has also been settled by various judgments that the word “place” would refer to „juridical seat” for the purpose of Section 20(1) and Section 20(2) of the Act whereas in Section 20(3) the word “place” is equivalent to “venue”.

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29. What emerges therefore by reading of the various judgments referred to above is that it is really the seat of arbitration which is akin to an exclusive jurisdiction clause. Where there are no contrary provisions in the agreement, the place would be the juridical seat which would determine the territorial jurisdiction of a Court. Where the words in the arbitration clause are neither seat nor place and the arbitration clause only refers to words such as „venue” or “held in” the intent of the parties would have to be seen from the agreement. If the parties intend that the arbitration proceedings are to be held as a whole at that particular venue then the venue also becomes a juridical seat. It is also clear from the now well settled law that it is the seat or the juridical seat which will be the guiding factor for a Court to determine its jurisdiction while examining a petition under Section 11 of the Act.”

14. It is thus seen that under the facts of the present case, the decision relied upon by learned counsel for the respondent in the case of **Ravi Ranjan Developers** in which the Court examined the effect of the term ‘place of sitting’, will have no application and instead the decision relied upon by learned counsel for the petitioner in the case of **Cinepolis India Pvt Ltd** in which the Court examined the effect of the term ‘place’, is fully applicable in light of the facts of the present case. This Court, thus, has jurisdiction to appoint the arbitrator.

15. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. This Court



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in ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd***⁴, 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***⁵ has held that the scope of inquiry under Section 11 of the 1996 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 1996 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

⁴ 2025 SCC OnLine Del 3022

⁵ 2025:DHC:7477



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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 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



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*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*⁶ 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*⁷ 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:

⁶ 2024 SCC OnLine SC 1754

⁷ 2025 SCC OnLine SC 1471



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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 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]



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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."

16. 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. Jagat Singh, Advocate, (Mobile No.+91-9671984628 and Email-ID-reachjagat@yahoo.com) as the Sole Arbitrator.

17. 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.

18. 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.

19. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.

20. 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.

21. 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



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the electronic mode as well.

22. Accordingly, the instant petition stands disposed of.

AUGUST 28, 2025
Nc/amg

PURUSHAINdra KUMAR KAURAV, J