



2025:DHC:6730



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

Date of decision: 05th AUGUST, 2025

IN THE MATTER OF:

+ **ARB.P. 608/2025 & I.A. 9113/2025, I.A. 16634/2025**

PRAGATI POWER CORPORATION LTD

.....Petitioner

Through: Mr. Pardeep Dhingra, Mr. Rahul Gaur, Mr. Varun Chandiok, Mrs. Snigdha Lal, Mr. Pradeep Kumar and Mr. Archit Relan, Advocates

versus

ORIENTAL INSURANCE COMPANY LIMITEDRespondent

Through: Mr. A. K. Singla, Sr. Advocate with Mr. Abhishek Gola, Ms. Bachita Baruah, Mr. Arun Kumar, Mr. Rohan Sehrawat, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 has been preferred on behalf of Petitioner, seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the Industrial All Risk Policy bearing No. 212800/11/2018/07 for the period from 07.06.2017 to 06.06.2018.

2. Shorn of unnecessary details, brief facts leading to the disputes between the parties are as follows:-

- i. The Petitioner obtained an Industrial All Risk Policy bearing No. 212800/11/2018/07 [**"IAR Policy"**] from the Respondent.



2025:DHC:6730



The perils covered under the IAR Policy were fire and special perils, with add on coverage of STFI, earthquake, fire loss of profit, machinery breakdown [“**MBD**”], and machinery loss of profit [“**MLOP**”]. Instruments/testing apparatus/equipment’s and machines, pertaining to protection department and of other sister concerns, as lying/contained in the said premises for carrying out some specific jobs there, were also covered under the IAR Policy.

- ii. As per the IAR Policy, the quantum of sum insured is as follows:-
 - a. Standard Fire & Special Perils (including RSMD & STFI): Rs. 4674.99 crores
 - b. Earthquake (including plinth foundation): Rs. 4935.53 crores
 - c. Machinery Breakdown (MBD): Rs. 4095.35 crores
 - d. Debris Removal: Rs. 1.00 crore
 - e. Fire Loss of Profit (FLOP): Rs. 1083.03 crores
 - f. Machinery Loss of Profit (MLOP): Rs. 1083.03 crores
- iii. The IAR Policy also contains an arbitration clause, which reads as under:-

"12. If any difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of an arbitrator to be appointed in writing by the parties in difference, or if they cannot agree upon a single arbitrator, to the decision of two dis-interested persons as



arbitrators of whom one shall be appointed in writing by each of the parties within two calendar months after having been required so to do in writing by the other party in accordance with the provision of the Arbitration Act, 1940, as amended from time to time and for the time being in force. In case either party shall refuse or fail to appoint arbitrator within two calendar months after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint sole arbitrator and in case of disagreement between the arbitrators, the difference shall be referred to the decision of an umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with the arbitrators and preside at their meetings.

It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this policy.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator, arbitrators or umpire of the amount of the loss or damage shall be first obtained."

- iv. It is the case of the Petitioner that on 08.10.2017 at around 0009 hours, Unit #2 of Steam Turbine Generator ["STG#2"] which was running at about 211 MW, tripped. On a preliminary checking, it was observed that both the Pressure Release Valves



2025:DHC:6730



were operated and a minor crack was observed in main tank near B phase bushing.

- v. The Respondent was immediately informed about the said incident vide an email dated 08.10.2017.
- vi. Bharat Heavy Electronics Limited [“**BHEL**”], Bhopal being the Original Equipment Manufacture [“**OEM**”] was informed about the incident at the Petitioner’s Power Plant. Thereafter, a preliminary inspection conducted by BHEL revealed that the transformer was internally damaged and therefore, was required to be shifted to BHEL, Bhopal for further detailed inspection and necessary repairs.
- vii. Accordingly, the damaged transformer was electrically isolated, dismantled and sent to BHEL, Bhopal on 08.11.2017. A detailed inspection was carried out, which indicated that B Phase LV winding had sustained severe damage.
- viii. Months later, on 05.08.2018, the transformer was received at PPS-III, Bawana and thereafter erected and charged at no load on 11.09.2018. After nearly 24 hours period of back charging, the transformer was de-energized and LV connections of the transformer to the STG#2 were completed, allowing the transformer to be inducted into service on load. Subsequently, the capacity of STG#2 was added to declared capacity on 13.09.2018.
- ix. The Petitioner vide an email dated 08.04.2019 lodged the claim of Rs. 195.39 crores under MLOP for the 340 days when the STG#2 remained unavailable due to the tripping incident.



2025:DHC:6730



- x. The Respondent appointed M/s Bhatawadekar Insurance Surveyor & Loss Assessors Pvt. Ltd. [**“Surveyor”**] for assessing the Business Interruption Loss [**“BI Loss”**] caused due to the breakdown of generator transformer of STG#2 at PPS-III, Bawana.
- xi. *Vide* the Survey Report dated 03.06.2020, the Surveyor examined the loss of gross profit to the extent of Rs. 103.81 crores, with the deductible of Rs. 190.93 crores and as such, concluded the Petitioner’s claim as ‘No Claim’.
- xii. In accordance with the Survey Report dated 03.06.2020, the Respondent issued a Repudiation Letter dated 08.03.2021 to the Petitioner.
- xiii. After persistent requests of the Petitioner, the Survey Report was reviewed by an M/s Marsh India Insurance Brokers Private Limited [**“Insurance Consultant”**], who *vide* its Report dated 19.07.2023 conveyed their disagreement with the Survey Report dated 03.06.2020 and concluded that the Petitioner was entitled to the claim of Rs. 156.88 crores.
- xiv. Accordingly, the Petitioner *vide* a Legal Notice dated 21.12.2023 demanded a recovery of Rs. 156.88 crores from the Respondent, on account of MLOP along with 18% from the date the amount fell due and compensation to the tune of Rs. 10,00,000/-.
- xv. Having received no response from the Respondent to the Legal Notice dated 21.12.2023, the Petitioner invoked the arbitration clause contained in the IAR Policy *vide* a notice dated



2025:DHC:6730



01.06.2024 under Section 21 of the Arbitration and Conciliation Act, 1996 and nominated an Arbitrator to adjudicate the dispute.

xvi. In response to the Section 21 Notice, the Respondent through its Advocate sent a reply dated 04.07.2024, disputing the very invocation of Clause 12 of the IAR Policy, appointment of the Arbitrator as nominated by the Petitioner, while also disputing its liability qua the Petitioner's claims.

xvii. In light of the fact that the Respondent did not propose any other name for an Arbitrator in its Reply dated 04.07.2024, the Petitioner issued another letter dated 25.09.2024, proposing another name of an Arbitrator. This time, in their response letter dated 04.10.2024, the Respondent again denied the liability qua the present dispute as well as the invocation of arbitration clause, while again not having proposed any name for an Arbitrator.

3. Since no consensus could be reached between the parties as to the appointment of the Arbitrator to adjudicate upon the *inter se* disputes on one hand while on the other, the Respondent maintained its objection *qua* its liability as well as against the invocation of Clause 12 in the IAR Policy, the Petitioner has now approached this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying for the appointment of an Arbitrator as per Clause 12 of the IAR Policy.

4. When the petition came up for hearing before this Court, the learned Senior Counsel for the Respondent took a preliminary objection as to the arbitrability of the claims raised by the Petitioner. It is submitted by the



2025:DHC:6730



learned Senior Counsel for the Respondent that since Clause 12 of the IAR Policy specifically states that for a dispute to be referred to arbitration, the Respondent must not dispute its liability and such dispute must only pertain to the quantum of claims raised. In this background, it is submitted that the Respondent has denied its liability *qua* the claims raised by the Petitioner *vide* its response letters dated *inter alia* 04.07.2024, 04.10.2024 and 01.12.2024, and therefore, the claims raised by the Petitioner are non-arbitrable. In support of his contentions, the learned Senior Counsel for the Respondent has relied on the judgments of the Apex Court in United India Insurance Co. Ltd. v. Hyundai Engineering and Construction Co. Ltd. and Ors. (2018) 17 SCC 607, Oriental Insurance Co. Ltd. v. Narbheram Power and Steel Pvt. Ltd., (2018) 6 SCC 534 as well as a Judgment dated 02.11.2018 delivered by a Coordinate Bench of this Court in Worldfa Exports Pvt. Ltd. v. New India Assurance Co. Ltd., ARB. P. 665/2018.

5. In its rejoinder submissions, learned Counsel for the Petitioner has buttressed his arguments with the decision of the Apex Court in SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754 to submit that it is impermissible for this Court, while exercising its jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996, to adjudicate upon the arbitrability of the disputes. The learned Counsel for the Petitioner has also placed reliance on the judgments of Coordinate Bench of this Court in Payu Payments Private Limited v. New India Assurance Co. Ltd., 2024 SCC OnLine Del 6777 and Inox World Industries Pvt. Ltd. v. IFFCO-Tokio General Insurance Company Ltd., 2025 SCCO OnLine Del 2873.

6. Heard the Counsels for the parties and perused the material on record.



2025:DHC:6730



7. The predominant argument of the learned Senior Counsel for the Respondent in opposing the appointment of an Arbitrator as prayed for by the Petitioner, is that of non-arbitrability of the disputes raised by the Petitioner.

8. The scope of interference of a Court exercising its power under Section 11 of the Arbitration and Conciliation Act, 1996, has now been crystallized by the Apex Court in the judgment of SBI General Insurance Co. Ltd. v. Krish Spinning, **2024 SCC OnLine SC 1754**, which has resulted in a significant shift in landscape. In doing so, the Apex Court has rendered the following observations, which reads 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).

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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.

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123. The power available to the referral courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the referral court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the arbitral tribunal at the nascent stage of Section 11, the referral courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected.

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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.”

9. This Court also takes note of the judgments rendered by the Coordinate Benches in Payu Payments (supra) & Inox World Industries (supra), whereby the decision of the Apex Court in Krish Spinning (supra) has been graciously upheld and minimal interference has been made in



adjudicating upon petitions filed under Section 11 of the Arbitration and Conciliation Act, 1996. Both these decisions squarely cover most of the contentions raised by the learned Senior Counsel for the Respondent in the present petition.

10. Yet, in order to duly pay heed to the arguments raised by the parties, this Court shall now examine the rival contentions of the parties in light of the array of case laws laying down the law on Section 11 of the Arbitration and Conciliation Act, 1996.

11. At the very outset, this Court notes that there exists a valid arbitration agreement under Clause 12 of the IAR Policy between the parties to the present petition. This has not been disputed by the learned Senior Counsel for the Respondent. Further, this dispute regarding arbitrability in no way alters the existence of the arbitration agreement, and as such, can be better adjudicated upon by the arbitral tribunal as a preliminary issue. Resultantly, in terms of Krish Spinning (supra), this sole observation that there exists an arbitration agreement is sufficient for this Court to appoint an Arbitrator to adjudicate upon the *inter se* disputes between the parties to the present Petition.

12. Though it has already been observed by the Coordinate Benches of this Court in Payu Payments (supra) & Inox World Industries (supra), this Court still deems it appropriate to observe that the decisions of the Apex Court in Hindustan Engineering (supra) and Narbheram Power (supra) no longer hold good on the law of scope of examination by a Section 11 Court. These decisions of the Apex Court were rendered prior in time to the Judgment of Krish Spinning (supra) and as such, the scope of a Section 11 Court is drastically different at present.



2025:DHC:6730



13. 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.

14. It is 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 *inter alia* regarding the arbitrability of disputes before the Arbitrator.

15. Accordingly, Justice Adarsh Kumar Goel, Former Judge of Supreme Court of India (Mob: 9810213040) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

16. 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.

17. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

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

SUBRAMONIUM PRASAD, J

AUGUST 05, 2025

Prateek/AP