



2025:DHC:8188



\$~O-3

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1099/2025**

Date of Decision: **02.09.2025**

IN THE MATTER OF:

INVENTION INDIA (EXPORTS) PVT. LTD.Petitioner

Through: Mr. Shashi Kaushik and Mr. Narender
Kumar, Advs.

versus

INDRAPRASTHA GAS LTDRespondent

Through: Mr. Vishweshwar Mishra and Ms.
Sachpreet Kaur, Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. Heard learned counsel appearing for the parties.
2. The facts of the case would indicate that the petitioner is a duly incorporated company engaged in the business of manufacturing and export of garments, and had obtained an industrial natural gas connection from the respondent, Indraprastha Gas Limited (IGL), for its unit located at B-10, Sector-58, Noida, Uttar Pradesh. At the time of connection, the Petitioner deposited a refundable security amounting to Rs. 6,95,406/- (Rupees Six Lakhs Ninety-Five Thousand Four Hundred Six Only), which was paid through two cheques of Rs. 1,56,588/- and Rs. 5,38,818/- respectively, both



2025:DHC:8188



of which were duly encashed by the Respondent. After the COVID-19 pandemic, the Petitioner's operations were scaled down considerably, eventually leading to the closure of its operations at the said premises and the decision to permanently discontinue the gas supply.

3. It is the case of the petitioner that on 23.09.2022, the petitioner requested the Respondent to permanently disconnect the gas connection and remove the installed meters (bearing Nos. 3403758404 and 9800001719), which was duly acknowledged by the Respondent. The disconnection was completed, and meters were removed on 17.10.2022. Further the petitioner submits that despite this, and notwithstanding repeated requests made by the Petitioner, including a detailed letter dated 16.11.2022, the Respondent failed to refund the security deposit. The Petitioner was later informed, without any prior intimation or supporting explanation, that the security deposit amount had been "adjusted" against alleged pending bills, even though the Petitioner had negligible to zero gas consumption during the final operational period, as evident from the monthly invoices issued by the Respondent showing nil or nominal usage.

4. Moreover, the Petitioner submits that such unilateral adjustment by the Respondent is wholly illegal, arbitrary, and contrary to the agreed terms of service, particularly Clause 7.10 of the contract, which clearly stipulates that the security deposit is refundable upon termination of the connection, subject to reconciliation of actual dues. In the present case, there were no legitimate outstanding dues warranting any adjustment of the security amount. The Petitioner states that it has acted in good faith, complied with all contractual and procedural requirements, and yet has been deprived of its



rightful refund. The actions of the Respondent amount to unjust enrichment and breach of contract. Therefore, the Petitioner submits that he is constrained to approach this Court under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an independent and impartial Arbitrator to adjudicate the disputes and direct refund of the aforesaid amount along with interest and costs.

5. Learned counsel appearing for the respondent also submits that he be granted liberty to raise all his objections including claim and counter claim before the Arbitrator.

6. Arbitration clause 24 is reproduced as below:

“DISPUTE RESOLUTION:

- i. The SELLER and the BUYER shall make every effort to resolve amicably, by direct informal negotiations, any disagreement(s) or the dispute(s) arising between both the parties in relation to or in connection with this GSA whether directly or indirectly.*
- ii. If any dispute or difference of any kind whatsoever shall arise out of this GSA (and whether before or after the termination or breach of this GSA) parties hereto shall promptly and in good faith negotiate with a view to its amicable resolution and settlement.*
- iii. In the event, no amicable resolution or settlement is reached within a period of 30 days from the date on which dispute difference arose (in writing). On invocation of the Arbitration cause by either Party, IGL may suggest a panel of three independent and distinguished persons and inform the same to the other party, other party to select any one among them to act as the sole arbitrator. In the event of failure of the other party to select the sole arbitrator within 30 days from the receipt of the communication suggesting the panel of arbitrators, the right of selection of sole arbitrator by the other party shall stand forfeited and IGL shall have right to proceed with the appointment of the sole arbitrator. In such case, the decision of*



IGL on the appointment of Sole Arbitrator shall be final and binding on the parties. The Parties to the dispute will share equally the cost of arbitration as intimated by the arbitrator.

- iv. *The decision of the Arbitral Tribunal shall be final and binding on both the parties. The place of Arbitration shall be New Delhi and the language of the arbitration should be English.”*

7. 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 ***Pradhyan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd***¹, 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

¹ 2025 SCC OnLine Del 3022

² 2025:DHC:7477



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 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 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(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

³ 2024 SCC OnLine SC 1754



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.

(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

⁴ 2025 SCC OnLine SC 1471



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.”

8. 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. Katyayani Vajpayee, (Mobile No. 8588064361, Email: katyayanivajpayee07@gmail.com), as the sole Arbitrator.

9. In view of the aforesaid, the Court finds that the dispute has arisen which is amenable to be adjudicated by the Arbitrator.

10. 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.

11. 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.

12. The registry is directed to send a receipt of this order to the



2025:DHC:8188



learned arbitrator through all permissible modes, including through e-mail.

13. 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.

14. 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 the electronic mode as well.

15. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

SEPTEMBER 2, 2025/P/SPH