



2026:DHC:1268



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

Date of Decision: 12.02.2026

+ ARB.P. 83/2026

LINK INFRATECH PVT LTD.Petitioner

Through: Mr. Bhavesh Kumar Sharma,
Advocate.

versus

EMINENT INFRA DEVELOPERS PVT LTD & ANR.

.....Respondents

Through: Mr. Vasu Goyal, Advocate for
R-1.

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+ ARB.P. 212/2026

LINK INFRATECH PVT LTDPetitioner

Through: Mr. Bhavesh Kumar Sharma,
Advocate.

versus

EMINENT INFRA DEVELOPERS PVT LTD & ANR.

.....Respondents

Through: Mr. Vasu Goyal, Advocate for
R-1.

CORAM:

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (ORAL)

1. The present Petitions, filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 [**“Act”**], seek the appointment of an independent Arbitrator for adjudication of disputes *inter se* the parties in relation to Blocks ‘J’ and ‘K’, arising out of the Letters of

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Intent dated 18.10.2010 and 22.09.2010 [“**Agreements**”].

2. The said Agreements contain identical arbitration clauses, set out in Clause 5.8.6 thereof, which read as follows:

“5.8.6. ARBITRATION.

All question or disputes or differences, claim, right, matter or thing whatsoever in any way arising out of or relating to this contract or the conditions thereof otherwise concerning the works or the execution or failure to execute the same, whether arising during the progress of the work or after the completion or abandonment or breach of the Contract hereof except the excepted matters as per clause 5.8.5 of this agreement shall be referred to the Arbitration and final decision of a single Arbitrator being a fellow of Indian Institute of Engineers or Indian Institute of Consultant or on the CPWD panel of Arbitrators or any panel approved by a Court of law of Government to be easier of disagreements to appointment of a single arbitrator, for the arbitration of two arbitrators drawn from the same sources as in the case of a single arbitrator mentioned above, one to be appointed by each party, which arbitrators shall before taking upon themselves the burden the reference appoint an umpire. The office of Arbitrators will be in New Delhi, Where they will sit and here all the matters referred to them for arbitration.

5.8.6.1 The Arbitrator (s) /or the Umpire as the case may. be has have the power to open up, review and revise any certificate, opinion, requisition or notice in regard to the excepted matters to determine all matters in dispute which shall be submitted to then.

5.8.6.2 Subject as aforesaid, the provisions of the Arbitrator Act, 1940, or any statutory modification or re-enactment thereof and the rules made there under and the time being in force shall apply to the arbitration, proceeding under this clause It is a term of the contract that the party Invoking arbitration shall specify the dispute or disputes to be referred to arbitration on under this clause together with the amount or amounts claimed in the contract that if the Contractor/s does/do not make claim so in writing within 90 days of receiving the payment in case of Interim certificate and 28 days in respect of final Certificate, the claim of the Contractor (s) will be deemed to have been waived and absolutely barred and the Employer shall be discharged and released of all liabilities under the contract in respect of these claims.

5.8.6.3 The Employer and the Contractor, hereby also expressly agree that the arbitration under this clause shall be condition precedent to any right of the action under the contract.”

3. The record reveals that a common Notice under Section 21 of the Act dated 01.08.2024 was served upon the Respondents.

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4. Before moving to the submissions made by the parties, 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 ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd [2025 SCC OnLine Del 3022]*** has, after taking into consideration various precedents of the Hon'ble Apex Court, extensively dealt with the scope of interference at the stage of Section 11 of the Act. The Court held as under:-

“9. 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. The Supreme Court in the case of *SBI General Insurance Co. Ltd. v. Krish Spinning*, while considering all earlier pronouncements including the Constitutional Bench decision of seven judges in the case of *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899*, In re has held that scope of inquiry at the stage of appointment of an Arbitrator is limited to the extent of *prima facie* existence of the arbitration agreement and nothing else.

10. It has unequivocally been held in paragraph no. 114 in the case of *SBI General Insurance Co. Ltd.* that observations made in *Vidya Drolia v. Durga Trading Corpn.*, and adopted in *NTPC Ltd. v. SPML Infra Ltd.*, 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 not apply after the decision of *Re : Interplay*. The abovenoted paragraph no. 114 in the case of *SBI General Insurance Co. Ltd.* 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)*.”

11. *Ex-facie* frivolity and dishonesty are the issues, which have

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been held to be within the scope of the Arbitral Tribunal which is equally capable of deciding upon the appreciation of evidence adduced by the parties. While considering the aforesaid pronouncements of the Supreme Court, the Supreme Court in the case of *Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd.*, however, has held that the referral Courts under Section 11 must not be misused by one party in order to force other parties to the arbitration agreement to participate in a time-consuming and costly arbitration process. Few instances have been delineated such as, the adjudication of a non-existent and *malafide* claim through arbitration. The Court, however, in order to balance the limited scope of judicial interference of the referral Court with the interest of the parties who might be constrained to participate in the arbitration proceedings, has held that the Arbitral Tribunal eventually may direct that the costs of the arbitration shall be borne by the party which the Arbitral Tribunal finds to have abused the process of law and caused unnecessary harassment to the other parties to the arbitration.

12. It is thus seen that the Supreme Court has deferred the adjudication of aspects relating to frivolous, non-existent and *malafide* claims from the referral stage till the arbitration proceedings eventually come to an end. The relevant extracts of *Goqii Technologies (P) Ltd.* reads as under:—

“20. As observed in Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 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

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the Arbitral Tribunal will rightfully be equipped to determine.”

13. In view of the aforesaid, the scope at the stage of Section 11 proceedings is akin to the eye of the needle test and is limited to the extent of finding a *prima facie* existence of the arbitration agreement and nothing beyond it. The jurisdictional contours of the referral Court, as meticulously delineated under the 1996 Act and further crystallised through a consistent line of authoritative pronouncements by the Supreme Court, are unequivocally confined to a *prima facie* examination of the existence of an arbitration agreement. These boundaries are not merely procedural safeguards but fundamental to upholding the autonomy of the arbitral process. Any transgression beyond this limited judicial threshold would not only contravene the legislative intent enshrined in Section 8 and Section 11 of the 1996 Act but also risk undermining the sanctity and efficiency of arbitration as a preferred mode of dispute resolution. The referral Court must, therefore, exercise restraint and refrain from venturing into the merits of the dispute or adjudicating issues that fall squarely within the jurisdictional domain of the arbitral tribunal. It is thus seen that the scope of enquiry at the referral stage is conservative in nature. A similar view has also been expressed by the Supreme Court in the case of *Ajay Madhusudan Patel v. Jyotrindra S. Patel.*”

5. Learned counsel appearing on behalf of the Petitioner submits that, in respect of one of the blocks, *namely* L-Block, learned Co-ordinate Bench of this Court has, by Order dated 28.05.2025, already referred the disputes between the parties to arbitration. It is contended that the said Order, passed in proceedings arising out of the analogous contractual framework, directed reference of the disputes to arbitration in the following terms:

“**8.** For the said reasons, the petition is allowed and the following directions are issued:-

- i) The Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the DIAC) will appoint an Arbitrator out of the Panel of the Advocates maintained by the DIAC.
- ii) The arbitration will be held under the aegis and rules of the DIAC.
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in

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terms of Section 12 of the Act prior to entering into the reference.

- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- vi) The parties shall approach the DIAC within two weeks from today.”

6. It is pointed out by the parties that the appointment, in terms of the Order dated 28.05.2025, has not yet been communicated by the Delhi International Arbitration Centre [“DIAC”] concerning L-Block. Accordingly, DIAC is directed to notify the parties of the appointment of the learned Arbitrator at the earliest.

7. Learned counsel for the parties are *ad idem* that the present matters may also be referred to arbitration on similar terms, by way of appointment of a Sole Arbitrator.

8. In view of the aforesaid consensus and in the interest of consistency, the present matters are referred to arbitration on the same terms as contained in the Order dated 28.05.2025.

9. DIAC is accordingly directed to appoint a Sole Arbitrator from its panel of Advocates to adjudicate the disputes in the present matters as well.

10. The Registry is directed to forward a copy of this Order to the learned Arbitrator through all permissible modes, including by e-mail.

11. All rights and contentions of the parties, including those relating to claims and counter-claims, are kept open to be adjudicated by the learned Arbitrator on their own merits and in accordance with law.

12. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy

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between the parties.

13. Accordingly, the instant petitions stand disposed of.

14. A photocopy of the Order passed today be kept in the connected matter.

HARISH VAIDYANATHAN SHANKAR, J.
FEBRUARY 12, 2026/tk/her/jk

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