



2026:DHC:1176



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 10.02.2026**

+ ARB.P. 947/2024 & I.A. 8984/2025 (Dir.)

M/S SANDHU MOTOR FINANCE PVT LTDPetitioner

Through: Ms. Sonali Arora, Advocate.

versus

RAHUL KASHYAPRespondent

Through: None.

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

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JUDGEMENT (ORAL)**HARISH VAIDYANATHAN SHANKAR, J.**

1. The present Petition, under Section 11(5) of the **Arbitration and Conciliation Act, 1996¹**, has been filed seeking the appointment of Sole Arbitrator for the purpose of adjudication of disputes *inter se* the parties arising out of the **Loan Agreement being SMF/2018/41 dated 21.12.2018²** executed between the parties.

2. Clause 17 of the Agreement, which is stated to be the arbitration clause, reads as follows:

“17. Arbitration and Dispute Settlement

- a) All disputes, differences and/or claims, arising out of this Agreement, whether during its subsistence or thereafter, shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any other statutory modification or re-enactment for the time being in force and shall be

¹The Act

²Agreement



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conducted by a sole arbitrator to be appointed by the Lender. The applicable law shall be Indian laws. In the event of incapacity or resignation or death of the sole arbitrator so appointed, the Lender shall be entitled to appoint another arbitrator in place of the earlier arbitrator, and the proceedings shall continue from the stage at which the predecessor had left

- b) The award given by the arbitrator shall be final and binding on the parties to this Agreement. The cost of the Arbitration shall be borne with by the Party/ies, in accordance with the Award passed by the Arbitrator.
- c) The venue of Arbitration shall be as specified in Schedule 1 hereto and the proceedings shall be conducted in English language.”

3. Learned counsel appearing on behalf of the Petitioner draws the attention of this Court to Schedule 1 of the Agreement, wherein it is specified that the place of the Arbitration as well as the jurisdiction of the Court would be Delhi.

4. The material on record indicates that, pursuant to the disputes that arose between the parties, a Notice under Section 21 of the Act dated 17.07.2021, invoking Arbitration in terms of Clause 17 read with Schedule 1 of the Agreement, was issued by the Petitioner. However, no reply was filed by the Respondent *qua* the said notice.

5. Consequently, the Petitioner nominated Ms. Priyanka Agarwal, Advocate, as Sole Arbitrator, to adjudicate upon the claims of the Petitioner.

6. A request letter dated 19.07.2021 was also sent to Ms. Priyanka Agarwal, Advocate, in this regard. Accordingly, the Learned Sole Arbitrator had entered upon the reference.

7. Consequently, an Arbitral Award dated 31.08.2022 was passed by the Learned Sole Arbitrator, in favour of the Petitioner and against the Respondent, awarding a sum of Rs. 3,00,000/-, and the Respondent was also directed to pay Rs. 2,68,500/- towards interest @

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36% for the period w.e.f. 22.12.2018 to 15.06.2021, with further interest @ 36% p.a. till the date of realization and cost of Rs. 7,000/-.

8. The Respondent failed to pay the said outstanding amount and also failed to pay the awarded amount, therefore, the Petitioner filed an execution petition before the Learned District Judge (Commercial Court-01), Central District, Tis Hazari Court, Delhi, which was registered as Ex. Comm. No. 202/2023, titled as “M/S Sandhu Motor Finance Pvt Ltd V. Rahul Kashyap”.

9. However, in view of the law laid down by a Division Bench of this Court in **Kotak Mahindra Bank Ltd. Vs Narendra Kumar Prajapat**³, the above said execution petition was dismissed by the learned Commercial Court on the ground that the award passed by the Arbitrator appointed by the Decree Holder unilaterally, was in violation of Section 12(5) of the Act, and therefore, was rendered a nullity and non-executable.

10. Hence, the Petitioner has approached this Court by way of the present Petition, seeking the appointment of a learned Sole Arbitrator to adjudicate the disputes *inter se* the parties.

11. Learned counsel for the Petitioner draws the attention of this Court to Orders dated 06.10.2025 and 13.01.2026, passed by the Learned Joint Registrar, to submit that the Respondent has been duly served with the Notice of the present Petition, and their right to file reply also stands closed.

12. A perusal of the Order dated 06.10.2025 passed by the learned Joint Registrar would reveal that service has been effected upon the Respondent through WhatsApp as well as through speed post, which

³EFA (Comm.) 3/2023



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had been received back unserved (refused), amounting to service.

13. Further, the right of the Respondent to file Reply *qua* the Petition stood closed *vide* Order dated 13.01.2026, as passed by the learned Joint Registrar.

14. 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 in ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd [2025 SCC OnLine Del 3022]*** has extensively dealt with the scope of interference at the stage of Section

11. 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*,¹ 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*² 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.*,³ and adopted in *NTPC Ltd. v. SPML Infra Ltd.*,⁴ 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

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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 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.*,⁵ 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*



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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.”

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*⁶.”

15. Therefore, in view of the fact that disputes have arisen between the parties and there is an Arbitration clause in the agreement, and the Respondents have been duly served, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

16. Material on record indicates that the valuation of the present dispute is stated to be approximately Rs. 28,00,000/-.

17. Accordingly, **Ms. Garima Sachdeva, Advocate (Mobile No. 9910540343)**, is appointed as the sole Arbitrator.

18. The learned sole Arbitrator shall be entitled to fees in accordance with the Fourth Schedule of the Act or as may otherwise be agreed to between the parties and the learned sole Arbitrator.

19. The learned Arbitrator is also requested to file the requisite

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disclosure under Section 12(2) of the Act within a week of entering the reference.

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

21. 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.

22. 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 a copy of the said order be sent to the Arbitrator through the electronic mode as well.

23. Accordingly, the present Petition, along with pending Application(s), if any, stands disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J
FEBRUARY 10, 2026/tk/va/dj

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