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

\+ ARB.P. 1080/2024

ADITYA BIRLA FINANCE LIMITED .....Petitioner

Through: Mr. Mahip Datta Parashar, Mr.Aman Vasisth and Mr. Akshat Nayyar, Advocate

versus

GSK INDUSTRIES AND ORS .....Respondents

Through: Ms. Ridi Bansal, Advocate

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

O R D E R

% 12.01.2026

1. The present Petition, under Section 11 of the Arbitration and Conciliation Act, 1996, seeks the appointment of an Arbitrator in respect of various disputes that have arisen as a result of the Facility Agreement as well as the Guarantee Agreement between the parties, herein.

2. The material on record indicates that the Petitioner is a Non-Banking Financial Services Company. Further, Respondent No.1 is a partnership firm, represented through its partners, i.e., Respondent Nos. 3 and 4. Respondent No.1, along with Respondent No.4, approached the Petitioner for availing financial facilities, pursuant to which a loan of Rs.1,15,00,000/- was sanctioned in its favour.

3. Respondent Nos. 2 to 4 executed Facility Agreements and Deeds of Guarantee, both of which were dated 13.11.2019 and 25.05.2021, in favour of the Petitioner to secure the said financial facilities. The Respondents committed default in the payment of

equated monthly instalments for a period exceeding 90 days. As a result, the said loan account was classified as a Non-Performing Asset on 16.04.2022, in accordance with the Reserve Bank of India guidelines.

4. Owing to the continuing defaults, the Petitioner issued a statutory demand notice dated 19.05.2022 under Section 13(2) of the SARFAESI Act, 2002, demanding an outstanding amount of Rs.1,32,65,891.96/- as on 09.05.2022. Despite receipt of the said notice, the Respondents failed to discharge their liability or regularise the loan account.

5. Consequently, the Petitioner issued a notice dated 12.12.2022 invoking the arbitration in terms of Clause 25 of the Deeds of Guarantee and Clause 25.17 of the Facility Agreements.

> "**<u>Clause 25 of the Deeds of Guarantee:</u>**
> 25. That all claims or disputes arising out of or in relation to this Guarantee shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by Lender. All parties to this Guarantee hereby expressly consent to Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by Lender acting as the sole appointing authority. The place of arbitration shall be as mentioned in the Schedule I Part C hereinbelow. Parties agree that the courts as mentioned in the Schedule l Part C hereinbelow shall have the exclusive jurisdiction to exercise all powers under the Arbitration & Conciliation Act, 1996.
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> **<u>Clause 25.17 of the Facility Agreements</u>**
> **<u>Arbitration:</u>** All claims or disputes arising out of or in relation to this Agreement shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by Lender. All parties to this Agreement hereby expressly consent to Lender being the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by Lender acting as the sole appointing authority. The place of arbitration shall be Delhi. Parties agree that the courts in Delhi shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996.

Notwithstanding anything contained hereinabove, in the event the legal status of the Facility Provider changes or in the event of the law being made or amended so as to bring the Facility Provider under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the "DRT Act"), to proceed to recover dues from the Borrower(s) under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the Facility Provider, cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the Facility Provider such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date of the making of the law or the date when amendment becomes effective or the date when the Facility Provider exercises the option of terminating the mandate of arbitrator, as the case may be. Provided that neither a change in the legal status of the Facility Provider nor a change in law as referred to in this sub paragraph above, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement."

6. 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 as well in the order dated 24.04.2025 in case of ARB.P. 145/2025 titled as ***Pradhaan Air Express (P) Ltd. v. Air Works India Engineering (P) Ltd***[1] 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,** 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***

[1] 2025 SCC OnLine Del 3022

***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 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 SCC OnLine SC 1754 : 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 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”****.*

7. Learned counsel for the parties jointly submit that the disputes between the parties may be referred to arbitration under the aegis of **Delhi International Arbitration Centre** [“**DIAC**”].

8. Accordingly, **Ms. Neelima Tripathi, Senior Advocate (Mobile No.9810099919)** who is empanelled with the **Delhi International Arbitration Centre** [“**DIAC**”], is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

9. The arbitration would take place under the *aegis* of the 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.

10. The learned Arbitrator is also requested to file the requisite disclosure under Section 12 (2) of the Act within a week of entering of reference.

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

12. 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.

13. 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.

14. Accordingly, the present Petitions, along with pending application(s), if any, stand disposed of in the aforesaid terms and

directions.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 12, 2026/rk/her/jk