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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 13.01.2026
Judgment pronounced on: 28.01.2026

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ARB.P. 1610/2025

PURI CONSTRUCTIONS PVT LTD & ORS.Petitioners

Through: Mr. M.R. Shamshad, Senior
Advocate with Mr. Sarwar
Raza, Mr. Arijit Sarkar and Ms.
Devanshi Yadav, Advs.
Mr. Himanshu Juneja A.R.

versus

LARSEN AND TOUBRO LIMITEDRespondent

Through: Mr. Akhil Sibal, Senior
Advocate with Mr. Sameer
Parekh, Mr. Sumit Goel, Mr.
Abhishek Thakral, Ms.
Sreeparna Basak, Mr. Jayant
Bajaj and Ms. Sugandh Shahi,
Advs.

CORAM:

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

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition, under Section 11(6) of the **Arbitration and Conciliation Act, 1996¹**, has been filed seeking the appointment of a Sole Arbitrator to adjudicate the unadjudicated issues/ quantification of claims of the Claimant/ Petitioner herein pursuant to the Hon'ble Supreme Court judgment dated 21.04.2025 in Civil Appeal Nos. 2575-2581 of 2016 in relation to common Arbitration

¹ Act



Agreement as set out in the **Development Agreement dated 10.03.1998²**.

2. The material on record indicates that the Petitioners, on behalf of and in the name of PCPL, purchased land in Sector 53 and 54, Gurgaon, Haryana, with the objective of developing a Group Housing Project. In the year 1995, ITC Ltd., through its wholly owned subsidiary, **ITC Classic Real Estate Finance Ltd.³**, intended to jointly develop the project with the Petitioners. However, ITCREF subsequently exited the real estate sector.

3. Pursuant to this, an Exit Agreement dated 30.07.1997 was entered into between the Petitioners and ITCREF, under which ITCREF was assured a specified built-up area in the project.

4. The project was thereafter assigned to **Larsen & Toubro Ltd⁴**, the Respondent herein. Accordingly, the Development Agreement dated 10.03.1998 was executed between the Petitioners and the Respondents, with ITCREF as the consenting party. The Development Agreement at Clause 45 contained the Arbitration Clause, which reads as follows:

“45. All disputes arising out of or in connection with this Agreement shall be resolved by mutual discussions between the parties failing which, such disputes shall be referred to Arbitration. The procedure of arbitration shall be as per the Arbitration & Conciliation Act 1996. This agreement shall be subject to the jurisdiction of Courts at New Delhi only.”

5. Thereafter, it is stated in the Petition that certain disputes arose between the parties and the Petitioners herein, *vide* Legal Notice dated 18.09.2000, invoked arbitration.

² Agreement

³ ITCREF

⁴ L & T



6. It is further stated that the Petitioners thereafter filed an Arbitration Petition bearing A.A. No. 241 of 2000, under Section 11(6) of the Act, seeking the appointment of an Arbitrator to adjudicate upon the disputes that had arisen between the parties.

7. Thereafter, *vide* Consent Order dated 14.02.2001, this Court appointed Hon'ble Mr. Justice G. N. Ray (Retd.), former Judge of the Hon'ble Supreme Court, as the learned Sole Arbitrator to adjudicate the disputes *inter se* the parties. The learned Arbitrator rendered the **Arbitral Award on 28.12.2002⁵**.

8. Material on record further indicates that aggrieved by the Arbitral Award, the Respondent filed objections under section 34 of the Act before this Court in **OMP No. 26 of 2003⁶**, which was consequently allowed by a Co-ordinate bench of this Court, *vide* Order dated 26.11.2008 and the Arbitral Award was set aside.

9. The aforesaid Order passed in the Section 34 Petition was challenged by both parties by way of cross Appeals under Section 37 of the Act. The Division Bench of this Court *vide* order dated 30.04.2015, partly allowed the Appeal preferred by the Petitioners herein, thereby upholding the Arbitral Award, and setting aside only the damages component of the same.

10. The parties, thereafter, preferred Civil Appeal Nos. 2575-2581 of 2016 before the Hon'ble Supreme Court, seeking to challenge the Order dated 30.04.2015. The Hon'ble Supreme Court, upon adjudication, in those appeals held as follows:

“56. The powers of the Appellate Court under Section 37 of the Arbitration Act are not broader than those of the Court under Section 34 of the Arbitration Act. Therefore, what cannot be done

⁵ Arbitral Award

⁶ Section 34 Petition



in the exercise of the powers under Section 34 cannot be done in an Appeal under Section 37. An Arbitral Award cannot be modified. Thus, even after recording the conclusions in paragraph no. 119, the Division Bench has not modified the Award by partly setting aside the Judgment under Section 34. In paragraph 121 of the Judgment, the Division Bench held thus:

“121. In light of the above conclusions, parties are left to pursue the appropriate course of action under law. This Court notices that since the dispute has been in subsistence for a considerable period of time, an attempt may be made at settling the claims through mediation. FAO (OS) 21/2009, 22/2009 and 23/2009 are partly allowed to the above extent; FAO (OS) 194/2009 is dismissed, for the same reason.”

On a conjoint reading of Paragraph 119 and 121, we find that the remedy of PCL has been kept open to pursue appropriate course of action under law as there cannot be a remand to the Arbitral Tribunal for quantification of monetary claim. As the finding of the Arbitral Tribunal regarding breaches committed by L&T was affirmed, the Division Bench has rightly segregated that part of the Award by which, cost of arbitration was ordered to be paid to PCL by L&T. This part has been severed from rest of the Award. Therefore, this part of the Award must be complied with by L&T, if not already done. As documents of title were deposited with the Registrar, the direction to hand over the same to PCL cannot be faulted with. We cannot find any fault with the operative part in paragraph 120.”

11. Pursuant to the order of the Hon’ble Supreme Court, the Petitioners issued a fresh notice dated 14.05.2025 to the Respondent, invoking arbitration as per Clause 45 of the Development Agreement.

12. Thereafter, the parties attempted to resolve the dispute through mediation; however, the same was unsuccessful.

13. Consequently, the Petitioners preferred the present Petition, under 11(6) of the Act, seeking the appointment of an Arbitrator.

14. It is, however, pertinent to note that the Petitioners herein, in the prayer clause of the present Petition, have prayed for adjudication on a limited aspect of the “*unadjudicated issues/quantification of claims of the Petitioner/Claimant*”.



15. The learned Senior Counsel for the parties, on instructions, initially submitted that they are *ad idem* that the matter be referred to arbitration for the adjudication of disputes that had arisen between the parties. However, the learned Senior Counsel for the Petitioners, on instructions, vehemently pressed on the prayer that the matter be referred to arbitration only upon the unadjudicated aspect of the quantification of damages/claims.

16. Learned Senior Counsel for the Petitioners would submit that the claims and counter-claims have already been dealt with in the earlier Arbitral Award, and it has attained finality in view of the Judgment dated 30.04.2015 of the Division Bench of this Court, which upheld the Arbitral Award after setting aside the severable part of the award dealing with quantification of damages. The Judgement of the Division Bench was further upheld by the Hon'ble Supreme Court *vide* Judgment dated 21.04.2025 while permitting the Petitioners to pursue an appropriate course of action under law. Therefore, he would submit that the Hon'ble Supreme Court has granted the liberty to pursue appropriate remedies, limited to the aspect of quantifying the damages.

17. Resultantly, the learned Senior Counsel would submit that the issue of quantification of damages is the only aspect that needs to be adjudicated by the learned Arbitrator, as and when the matter is referred to arbitration and accordingly, would seek the directions of this Court to direct the learned Arbitrator to only adjudicate upon the remaining and limited aspect of quantification.

18. **Per Contra**, learned Senior Counsel for the Respondent would vociferously oppose the said prayer. He would submit that the scope of Section 11 of the Act is limited. He would submit that the issue of



adjudication of disputes to be referred to the Arbitrator, including permissible defences and counterclaims are all within the scope of jurisdiction of the learned Arbitrator. He would rely upon the Judgement of the Hon'ble Supreme Court in ***State of Goa v. Praveen Enterprises***⁷.

19. Learned Senior Counsel for the Respondent would further seek to rely on the Judgement of the Apex Court in ***SBI General Insurance Co. Ltd. v. Krish Spg.***⁸, to submit that the scope of enquiry at the stage of appointment of arbitrator i.e., Court exercising jurisdiction under Section 11 of the Act, is limited to the scrutiny of *prima facie* existence of the arbitration agreement, and nothing else.

20. We have heard the learned Senior Counsel for the parties, perused the paper book and material on record.

21. This Court, at the very outset, rejects the prayer of the Petitioners for seeking a limited adjudication on disputes as misconceived and incorrect.

22. This Court is cognizant of the scope of interference at the stage of a Section 11(6) Petition. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the Act has been fairly well settled. The Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd. (Supra)*** has crystallised the law in the following manner:

“114. The use of the term “examination” under Section 11(6-A) as distinguished from the use of the term “rule” under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a *prima facie* scrutiny of the existence of the arbitration

⁷ (2012) 12 SCC 581

⁸ (2024) 12 SCC 1



agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to “rule” under Section 16. The prima facie view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award.

117. In view of the observations made by this Court in *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re* [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] , 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* [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] and adopted in *NTPC Ltd. v. SPML Infra Ltd.* [NTPC Ltd. v. SPML Infra Ltd., (2023) 9 SCC 385 : (2023) 4 SCC (Civ) 342] 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 *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re* [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] .

121. 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.”

23. It is trite law that the Courts, while exercising their jurisdiction under Section 11(6) of the Act, shall not identify the disputes or refer the same to the Arbitral Tribunal for adjudication. This Court is guided by the Judgement of the Hon’ble Supreme Court in *State of Goa (supra)* as also the Judgement of this Court, passed by a Co-



ordinate Bench in *Pradhaan Air Express (P) Ltd. v. Air Works India Engineering (P) Ltd*⁹. The Apex Court in *State of Goa (supra)* has held as follows:

“28. Section 11 of the Act requires the Chief Justice or his designate only to appoint the arbitrator(s). It does not require the Chief Justice or his designate to identify the disputes or refer them to the Arbitral Tribunal for adjudication. Where the appointment procedure in an arbitration agreement requires disputes to be formulated and specifically referred to the arbitrator and confers jurisdiction upon the arbitrator to decide only such referred disputes, when an application is filed under Section 11(6) of the Act, alleging that such procedure is not followed, the Chief Justice or his designate will take necessary measures under Section 11(6) of the Act to ensure compliance by the parties with such procedure.

29. Where the arbitration agreement requires the disputes to be formulated and referred to arbitration by an appointing authority, and the appointing authority fails to do so, the Chief Justice or his designate will direct the appointing authority to formulate the disputes for reference as required by the arbitration agreement. The assumption by the courts below that a reference of specific disputes to the arbitrator by the Chief Justice or his designate is necessary while making appointment of arbitrator under Section 11 of the Act, is without any basis. Equally baseless is the assumption that where one party filed an application under Section 11 and gets an arbitrator appointed the arbitrator can decide only the disputes raised by the applicant under Section 11 of the Act and not the counterclaims of the respondent.

41. The position emerging from the above discussion may be summed up as follows:

(a) Section 11 of the Act requires the Chief Justice or his designate to either appoint the arbitrator(s) or take necessary measures in accordance with the appointment procedure contained in the arbitration agreement. The Chief Justice or the designate is not required to draw up the list of disputes and refer them to arbitration. The appointment of the Arbitral Tribunal is an implied reference in terms of the arbitration agreement.

(b) Where the arbitration agreement provides for referring all disputes between the parties (whether without any exceptions

⁹ 2025 SCC OnLine Del 3022



or subject to exceptions), the arbitrator will have jurisdiction to entertain any counterclaim, even though it was not raised at a stage earlier to the stage of pleadings before the arbitrator.

(c) Where however the arbitration agreement requires specific disputes to be referred to arbitration and provides that the arbitrator will have the jurisdiction to decide only the disputes so referred, the arbitrator's jurisdiction is controlled by the specific reference and he cannot travel beyond the reference, nor entertain any additional claims or counterclaims which are not part of the disputes specifically referred to arbitration.”

24. Despite the law being well settled, the learned Senior Counsel for the Petitioners, after agreeing to the matter being referred to arbitration without any qualification, upon being prodded by his client, despite being cautioned by this Court, relentlessly pursued the prayer to limit the scope of the reference of the learned Arbitrator.

25. Since the learned Senior Counsel for the parties are *ad idem* that the matter be referred to arbitration, this Court deems it appropriate to allow the present Petition to the extent that a learned Arbitrator be appointed for the said purpose, rejecting the prayer seeking to limit the adjudication only to the aspect of quantification of damages, with a cost of **Rs. 50,000/- to be deposited by the Petitioners with the Delhi High Court Bar Association**, within a period of two weeks from the date of this Order, failing which the Registry is directed to list the matter before the Court for necessary directions, in this regard.

26. Since, the Petitioner is a fairly large company and the small amount imposed as costs, for a Company, which is worth hundreds of crores, is only to serve as a reminder that judicial time is precious and injudicious and frivolous arguments should be eschewed. The queue for justice stretches several decades, and Counsel and litigants, like in the present case, who can afford to litigate endlessly, in the opinion of



this Court, would need a timely reminder to respect the cause of justice to all litigants and cooperate with the judicial system.

27. In view thereof, this Court requests **Hon'ble Mr. Justice Mukul Mudgal (Retired)** [REDACTED], to enter into the reference as the learned Arbitrator to adjudicate the disputes *inter se* the parties.

28. The learned sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12(2) of the Act.

29. 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.

30. The parties shall share the learned sole Arbitrator's fee and arbitral costs equally.

31. All rights and contentions of the parties in relation to the claims/counterclaims are kept open, to be decided by the learned sole Arbitrator on their merits, in accordance with law.

32. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy. All rights and contentions of the parties in this regard are reserved.

33. Let a copy of the said order be sent to the learned sole Arbitrator through the electronic mode as well.

34. Accordingly, the present Petition, along with pending application(s), is disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J.
JANUARY 28, 2026/va