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

+ **ARB.P. 1902/2025**

SH. ASHOK KUMAR

.....Petitioner

Through: **Mr. Avinash Trivedi and Mr.
Rahul Aggarwal, Advocates.**

versus

**PUBLIC WORKS DEPARTMENT GOVT OF NCT OF
DELHI**

.....Respondent

Through: **Mr. Abhinav Sharma, Advocate
through video-conferencing.**

CORAM:

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

ORDER

20.01.2026

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1. The present petition, under Section 11(6) of the Arbitration and Conciliation Act, 1996 [“**Act**”], has been filed seeking the appointment of an Arbitrator for the adjudication of disputes *inter se* the parties.

2. The material on record indicates that the Respondent herein had issued an Acceptance Letter dated 24.02.2018 in favour of the Petitioner and subsequently, the parties entered into an Agreement bearing No. 61/EE/PWD/SWR-II/2017-18/03833 [“**Agreement**”].

3. Clause 25 of the Agreement, which contains the arbitration clause, reads as follows:

“Clause 25: Settlement of Disputes & Arbitration

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawing and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way



arising out of or relating to the contract, designs, drawings, specification, estimates, instructions, orders of these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

- (i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge or if the Engineer in Charge considers any act or decision of the contractor or any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the Chief Engineer or where there is no Chief Engineer, the Additional Director General (CE/ADG) who shall refer the disputes to the Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DRC) shall give the opposing party two weeks for a written response, and, and, give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE/ADG. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.

If the Dispute Redressal Committee (DRC) fails to give its decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC) or expiry of time limit given above, then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Chief Engineer, CPWD, in charge of the work or if there be no Chief Engineer, the Additional Director General of the concerned region of CPWD or if there be no Additional Director General, the Director General, CPWD (CE/ADG/DG) for appointment of arbitrator on prescribed proforma as per Appendix XV under intimation to the other party.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.



The CE/ADG/DG shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-charge to CE/ADG/DG for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of

- a. party fails to appoint the second Arbitrator, or
- b. The two appointed Arbitrators fail to appoint the Presiding Arbitrator, then

The Director General, CPWD shall appoint the second or Presiding Arbitrator as the case may be.

- (ii) Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where Tendered amount is Rs. 100 Crore or less. Where Tendered Value is more than Rs. 100 Crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall be applicable.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the decision of the DRC.

It is also a term of this contract that any member of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering contracts at a level not lower than Chief Engineer (Joint Secretary level of Government of India) This shall be treated as a mandatory qualification to be appointed as arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast track arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the



counter claims if any can be directly filed before the arbitrator without any requirement of reference by the appointing authority, the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid as per the Act.

The place of arbitration shall be as mentioned in Schedule F. In case there is no mention of place of arbitration, the arbitral tribunal shall determine the place of arbitration.

The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.”

4. The material on record further indicates that certain disputes had arisen between the parties; consequently, the Petitioner *vide* Notice dated 01.07.2024 sought the consent of the Respondent for the constitution of the Dispute Redressal Committee (DRC), as also invoking arbitration as per the terms of Section 21 of the Act.

5. The Petitioner, thereafter, *vide* Notice dated 30.12.2024, invoked arbitration as per Clause 25(ii) of the Agreement.

6. Since the Respondent failed to reply to the aforementioned Notices, the Petitioner has approached this Court by way of the present Petition, seeking the appointment of a sole Arbitrator.

7. 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 re² 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 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 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.”

8. Learned counsel for the parties are *ad idem* that the matter may be referred to arbitration, and the learned Arbitrator who answers to the qualifications as set out in Clause 25 of the Agreement and is empanelled under the Delhi International Arbitration Centre [“DIAC”] may be appointed as an Arbitrator. The qualification as set out in Clause 25 of the Agreement reads as under:

“....

(ii)

It is also a term of this contract that any member of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering contracts at a level not lower than Chief Engineer (Joint Secretary level of Government of India) This shall be treated as a mandatory qualification to be appointed as arbitrator.

....”

9. The material on record further indicates that the disputed amount is stated to be Rs. 3,01,76,376/-.

10. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the agreement, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

11. Accordingly, Mr. A.K. Singhal, Director General, CPWD (e-mail : adityakumar1414@yahoo.com & Mobile No. 9910444589) who is empanelled with the DIAC, is appointed as the sole Arbitrator.

12. 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.

13. 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.

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

15. 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.

16. 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.

17. Accordingly, the instant petition stands disposed of.

HARISH VAIDYANATHAN SHANKAR, J.
JANUARY 20, 2026/tk/va/jk