



2026:DHC:1119



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 10.02.2026

+ ARB.P. 1984/2025

AXIS FINANCE LIMITED

....Petitioner

Through: Mr. Abu John Mathew,
Advocate through video-
conferencing.

versus

SATEESH U & ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

%

JUDGEMENT (ORAL)HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition, under Section 11(6) of the **Arbitration and Conciliation Act, 1996**¹, has been filed seeking the appointment of a Sole Arbitrator for the purpose of adjudication of disputes *inter se* the parties arising out of the **Loan Agreement dated 26.04.2023**² executed between the parties.

2. Learned counsel for the Petitioner, who appears through video conferencing, states he has filed his affidavit of service, in which it is indicated that the Respondents stand duly served through e-mail as well as through WhatsApp. It is also stated in the affidavit of service that the speed post sent to Respondent No. 1 was refused, and the

¹ The Act

² Agreement



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speed post sent to Respondent No. 2 was unable to be served as the party was not present at that address.

3. Clause 14 of the Agreement, which is stated to be the arbitration clause, reads as follows:

“14. Arbitration

(i) All disputes, differences and/or claim or questions arising out of these presents or in any way touching or concerning the same or as to constructions, meaning or effect thereof or as to the right, obligations and liabilities of the parties hereunder shall be referred to and settled by arbitration, to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof, of a sole arbitrator to be nominated by the Lender, and in the event of death, unwillingness, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the Lender may appoint a new arbitrator to be a sole arbitrator. The arbitrator shall not be required to give any reasons for the award and the award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be held Mumbai/Delhi.

(ii) Notwithstanding anything to the contrary contained herein, any dispute, controversy or claim arising out of or relating to this contract, including its construction, meaning, scope or validity thereof, shall be resolved and settled by arbitration under the Arbitration and Conciliation Act, 1996 (as amended) which may be administered electronically under Online Dispute Resolution (ODR), in accordance with its Dispute Resolution Rules (“Rules”).

(iii) The parties consent to carry out the aforesaid proceedings electronically via the email addresses and / or mobile numbers as per Axis Finance records, updated from time to time.

(iv) The parties agree that the aforesaid proceedings shall be carried out by a sole arbitrator appointed under the Rules. The juridical seat of arbitration shall be Delhi/Mumbai, India and the aforesaid proceedings shall be subject to the exclusive jurisdiction of the competent courts in Delhi/Mumbai, India. The language of arbitration shall be English. The law governing the arbitration proceedings shall be Indian law. The decision of the arbitrator shall be final and binding on the parties”

4. Learned counsel appearing on behalf of the Petitioner draws the attention of this Court to Arbitration clause, which reflects that the

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place of the signing of the Agreement is stated to be Delhi, and it is contended that in view of the same, Courts in Delhi would have the jurisdiction to try and entertain the present matter.

5. The material on record indicates that, pursuant to the disputes that arose between the parties, a Notice under Section 21 of the Act dated 12.11.2024 was issued by the Petitioner. However, no reply to the said Notice was forthcoming.

6. Hence, 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*³ 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

³ 2025 SCC OnLine Del 3022



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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*



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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. The material on record further indicates that the disputed amount is stated to be approximately Rs. 31,00,000/-.

9. 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.

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10. For the said purpose, this Court appoints **Mr. Amit Gupta, Advocate (Mobile No. 9711326509)** as the learned Sole Arbitrator, to enter into the reference and adjudicate the disputes as between the parties.

11. 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 within a week of entering the reference.

12. 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.

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

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

15. 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.

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

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

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

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