



2026:DHC:694



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 27.01.2026**+ **ARB.P. 2049/2025****G.S. EXPRESS PVT. LTD.Petitioner****Through: Mr. Ankur Khandelwal and Mr.
Chirag Sharma, Advocates.****versus****LAND PORT AUTHORITY OF INDIARespondent****Through: Mr. Siddharth, Mr. Harshit
Manwani, Ms. Himanshi
Girdhar and Mr. Deepanshu
Grover, Advocates.****CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR****% J U D G E M E N T (Oral)**

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 arising out of the General Conditions of Contract dated 15.04.2024 ["GCC"].

2. Clause 25.2 of the General Conditions of Contract, 2022, which contains the arbitration clause, reads as follows:

"25.2 Arbitration: If the aforesaid conciliation proceedings fail or the Conciliator fails to give proposal for settlement within the aforesaid period, either party may promptly give notice in the proforma prescribed in Appendix XVIII, under intimation to the other party, to the Chief Engineer or the Superintending Engineer concerned with the work (as applicable), hereinafter referred to as the Arbitrator Appointing Authority as Indicated in Schedule F, for appointment of Arbitrator.

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ARB.P. 2049/2025

Page 1 of 6



2026:DHC:694



However, a party may seek appointment of Arbitrator without taking recourse to the process of conciliation mentioned in sub-clause 25.1 above. In the event of either party giving a notice to the Arbitrator Appointing Authority for appointment of Arbitrator, the said Authority shall appoint Arbitrator as per the procedure given below and refer such disputes to arbitration.

(a) **Number of Arbitrators:** If the contract amount is less than Rs. 100 crore, the disputes may be referred for adjudication by a sole Arbitrator. If the contract amount is Rs. 100 crore or more, the disputes may be referred to an Arbitral Tribunal of three Arbitrators.

(b) **Qualification of Arbitrators:** It is a term of this contract that each member of the Arbitral Tribunal shall be Graduate Engineer with experience in execution of public works engineering contracts, and he should have worked earlier at a level not lower than the Chief Engineer (equivalent to level of Joint Secretary to the Government of India). The aforesaid educational qualification and work experience shall be mandatory for appointment as Arbitrator. The age of Arbitrator at the time of appointment shall not exceed 75 years. An Arbitrator may be appointed notwithstanding the total number of active arbitration cases with him.

(c) **Parties to select Arbitrator:** Based on the criteria specified above, a list of empanelled Arbitrators has been prepared in CPWD, and the parties shall have option to select an Arbitrator from the list sent to them.”

3. The material on record indicates that, pursuant to the disputes that arose between the parties, a Notice under Section 21 of the Act dated 10.10.2025 was issued by the Petitioner. To which the respondent did not file any reply.

4. Hence, the Petitioner has approached this Court by way of the present Petition seeking the appointment of a sole Arbitrator.

5. 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:-

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ARB.P. 2049/2025

Page 2 of 6



2026:DHC:694



“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



2026:DHC:694



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



2026:DHC:694



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.”

6. Learned counsel for the parties are *ad idem* that the matter may be referred to arbitration by way of appointment of a sole Arbitrator by this Court. Both parties are also desirous that the Arbitration be carried out under the *aegis* of the Delhi International Arbitration Centre [“**DIAC**”].

7. The material on record further indicates that the disputed amount is stated to be Rs. 2,16,22,950/-.

8. In view of the fact that disputes have arisen between the parties and there is an Arbitration clause in the GCC, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties, keeping in mind Clause 25 of the GCC, which stipulates that an Arbitrator, who shall be a Graduate Engineer with experience in execution of public works engineering contracts and who has worked at a level not lower than that of a Chief Engineer (equivalent to the level of Joint Secretary to the Government of India), be appointed to adjudicate *inter se* the parties.

9. Accordingly, Mr. A.K. Singhal, Director General, C.P.W.D. (e-mail : adityakumar1414@yahoo.com and Mobile No. 9910444589), who is empanelled with the DIAC, is appointed as the sole Arbitrator.

10. The arbitration would take place under the aegis of the Delhi



2026:DHC:694



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.

11. 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.

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

13. 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.

14. 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.

15. Accordingly, the instant petition stands disposed of.

HARISH VAIDYANATHAN SHANKAR, J.
JANUARY 27, 2026/tk/her/jk