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

+ ARB.P. 65/2026 & I.A. 590/2026 (Ex. From filing the dim copies of the documents P-2, P-3 & P-4)

R.K. JAIN AND SONS HOSPITALITY SERVICES PRIVATE LIMITED

.....Petitioner

Through: Mr. Mayank Jain and Ms.Naina Sharma, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL

.....Respondent

Through: Mr. Udit Dedhiya, Standing Counsel, Ms. Apurva Sachdev and Mr. Preyansh Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

ORDER

13.01.2026

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1. The present Petition, under Section 11(6) 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 Contractual Agreement dated 11.10.2017 assigned Identification No.33/EE/(CP)/2017-18 between the parties.

2. The material on record indicates that the Petitioner is a company engaged in the business of providing services, including manpower in the fields of housekeeping, security, horticulture (landscaping & plantation), etc. The Petitioner was awarded the Contract for the upgradation of the Minto Road section (Package-II) under the NDMC, being the lowest bidder, pursuant to the Letter of Acceptance dated 03.01.2018. The work was completed on 10.08.2018 to the satisfaction of the Respondent, and the final bill



dated 22.01.2019 was duly accepted.

3. The Respondent released the final bill amount and security deposit only on 08.11.2023, after an inordinate delay and without paying interest as stipulated under Clause 9 of the contract. Further, an amount of ₹96,848/- towards differential GST payable under Clause 38 remains unpaid.

4. Despite repeated representations and legal notices, the Respondent failed to resolve the disputes or render any decision under Clause 25 of the Contract. The petitioner initially filed a civil suit, which was withdrawn with liberty to initiate arbitration after the Respondent itself invoked the arbitration clause by filing an application under Section 8 of the Act.

5. Consequently, the Petitioner issued a notice dated 26.08.2025, invoking the arbitration in terms of Clause 25 of the Contractual Agreement dated 11.10.2017.

“CLAUSE 25

Settlement of Disputes & Arbitration

"Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, designs, drawings 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, specifications, estimates, instructions, orders or 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 on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the superintending Engineer shall give his written instructions or decision within



a period of one month from the receipt of the contractor's letter.

If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the letter so desires, and to offer evidence in support of its appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with this decision of the Chief Engineer, the contractor may within 30 days from the receipt of the Chief Engineer's decision, appeal before the Dispute Redressal Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the rejection of his disputes by the Chief Engineer. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. If the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC), 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 for appointment of arbitrator on prescribed proforma as per Appendix- XV, failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

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.

(ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (1) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chairperson, NDMC. If there be no Chairperson, the administrative head of NDMC. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of



arbitrator and giving reference to the rejection by the Chief Engineer of the appeal.

It is also a term of this contract that no person, other than a person appointed by such Chairperson NDMC or the administrative head of NDMC as aforesaid, should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the Intimation from the Engineer-in-charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the NDMC shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996)/ the Jammu & Kashmir Arbitration and Conciliation Act, 1997(35 of 1997) (as the case may be) or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that 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 equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid."

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 as in the order dated 24.04.2025 in case of ARB.P. 145/2025 titled as ***Pradhhaan 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 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

¹ 2025 SCC OnLine Del 3022



*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. The parties are also *ad idem* that, in view of the fact that the value of claims being approximately Rs. 8,56,390/-, the disputes be referred to arbitration, to be adjudicated by an Advocate.

8. Accordingly, **Ms. Archana Sachdeva, Advocate (Mobile No.9818758576)** is appointed as the Arbitrator to adjudicate the disputes *inter se* the parties.

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

10. 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.

11. The learned sole Arbitrator shall be entitled to fee in accordance with the Fourth Schedule of the Act or as may otherwise be agreed to between the parties and the learned sole Arbitrator.

12. The parties shall share the learned sole Arbitrator's fee and arbitral cost, equally.

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

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

15. Accordingly, the present Petition along with the pending application(s), if any, stands disposed of in the aforesaid terms and directions.

HARISH VAIDYANATHAN SHANKAR, J.
JANUARY 13, 2026/jyh/rk/her/jk