[2025] 6 S.C.R. 395 : 2025 INSC 665

Office for Alternative Architecture
v.
IRCON Infrastructure and Services Ltd.

(Civil Appeal No. 6620 of 2025)

13 May 2025

[Pamidighantam Sri Narasimha and Manoj Misra,* JJ.]

Issue for Consideration

Whether while exercising power u/s.11 of the Arbitration and Conciliation Act, 1996, the Court has to confine its consideration as to the existence of an arbitration agreement between the parties; If so, whether it would be permissible, while exercising jurisdiction u/s.11, to hold that some of the claims raised are non-arbitrable or fall within excepted category.

Headnotes†

Arbitration and Conciliation Act, 1996 – s.11 – In a nutshell, the case of the appellant, *inter alia*, is that while exercising power u/s.11 of the 1996 Act, the Court has to only examine whether the arbitration agreement exists or not and if it exists, an Arbitrator is to be appointed who, thereafter, would decide whether the claims fall within the excepted category or not – Correctness:

Held: Sub-section (6A) of s.11, which was inserted by Act 3 of 2016, with effect from 23.10.2015, makes it clear that while considering an application under sub-section (4) or sub-section (5) or sub-section (6), the Supreme Court or the High Court, as the case may be, shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement – Act 33 of 2019 omitted sub-section (6A) but the amending Act has not been notified thus far – In consequence, sub-section (6A) of s.11 of the 1996 Act remains in the statute book – The High Court fell in error in bisecting the claim of the appellant into two parts, one arbitrable and the other not arbitrable, when it found arbitration agreement to be there for settlement

* Author

of disputes between the parties – The correct course for the High Court was to leave it open to the party to raise the issue of non-arbitrability of certain claims before the arbitral tribunal, which, if raised, could be considered and decided by it. [Paras 7, 8, 12]

Case Law Cited

In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899 **[2023] 15 SCR 1081 : 2023 INSC 1066;** *SBI General Insurance Co. Ltd. v. Krish Spinning* **[2024] 7 SCR 840 : 2024 INSC 532 – relied on.**

Emaar India Limited v. Tarun Aggarwal Projects LLP and Anr. **[2022] 13 SCR 933 : (2023) 13 SCC 661 – referred to.**

List of Acts

Arbitration and Conciliation Act, 1996.

List of Keywords

Arbitral Tribunal; Exclusion of claims; Non-arbitrable claims; Existence of arbitration agreement; Appointment of an arbitrator; Bisecting claim.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6620 of 2025

From the Judgment and Order dated 06.09.2023 of the High Court of Delhi at New Delhi in ARBP No. 1425 of 2022

Appearances for Parties

Advs. for the Appellant:
Talwant Singh, Sr. Adv., B.S. Jakhar, Vikram Singh Jakhar, Ms. Bhawna Jakhar, Neeraj Jakhar, Viraj Rathee, Ms. Anshu Devar, Nihar Dagar, Ms. Shruti Datta, Ms. Varnika Sharma, Vishul Dabas, Sparsh Karnwal, Sriram P.

Advs. for the Respondent:
M/s. Kmnp Law, Abir Phukan, V. Shyamohan, Ms. Rishika Radhakrishnan.

Office for Alternative Architecture v.
IRCON Infrastructure and Services Ltd.

Judgment / Order of the Supreme Court

Judgment

Manoj Misra, J.

1. Leave granted.

2. This appeal impugns the judgment and order of the High Court of Delhi at New Delhi[1] dated 06.09.2023 whereby, while appointing an arbitral tribunal in exercise of power under Section 11[2] of the

1 The High Court

2 **11. Appointment of arbitrators.**

(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(3A) [The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under section 43-I, for the purposes of this Act:

Provided that in respect of those High Court jurisdictions, where no graded arbitral institution are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party shall be entitled to such fee at the rate as specified in the Fourth Schedule. Provided further that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.]

(4) If the appointment procedure in sub-section (3) applies and (a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or (b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, [the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be].

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree [the appointment shall be made on an application of the party in accordance with the provisions contained in sub-section (4).]

(6) Where, under an appointment procedure agreed upon by the parties,- (a) a party fails to act as required under that procedure; or (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, [the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.

Arbitration and Conciliation Act, 1996[3], the High Court excluded certain claims, as stated in paras 48 (ii), (iii) and (iv) of the claim petition, by holding them to be non-arbitrable /excepted matters in view of clause 50 and 50.2 of the agreement.

3. In a nutshell, the case of the appellant, *inter alia*, is that while exercising power under Section 11 of the 1996 Act, the Court has to only examine whether the arbitration agreement exists or not and if it exists, an Arbitrator is to be appointed who, thereafter, would decide whether the claims fall within the excepted category or not. It is thus prayed that the impugned order to the extent it excludes certain claims be set aside by leaving it open to the parties to raise all pleas before the arbitral tribunal.

4. Per contra, the learned counsel for the respondent submitted that the High Court is empowered to exclude non-arbitrable claims in light of the decision of this Court in "***Emaar India Limited vs. Tarun Aggarwal Projects LLP and Anr.[4]".***

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(7) Decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision.

(8) [The arbitral institution referred to in sub-sections (4), (5) and (6), before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to-(a) any qualifications required for the arbitrator by the agreement of the parties; and (b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.]

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, [the arbitral institution designated by the Supreme Court] *[Substituted 'the Supreme Court or the person or institution designated by that Court' by Act No. 33 of 2019, dated 9.8.2019.]* may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

(10) [The Supreme Court or, as the case may be, the High Court, may make such scheme as the said Court may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6), to it.]

(11) [Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different arbitral institutions, the arbitral institution to which the request has been first made under the relevant sub-section shall be competent to appoint.]

(12) Where the matter referred to in sub-sections (4), (5), (6) and (8) arise in an international commercial arbitration or any other arbitration, the reference to the arbitral institution in those sub-sections shall be construed as a reference to the arbitral institution designated under sub-section (3A).

(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite party.

(14) The arbitral institution shall determine the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal subject to the rates specified in the Fourth Schedule.

Explanation. - For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitration's (other than international commercial arbitration) where parties have agreed for determination of fees as per the rules of an arbitral institution.]

3 The 1996 Act

4 (2023) 13 SCC 661

5. We have considered the rival submissions and have perused the materials on record.

6. The short question that falls for our consideration is whether while exercising power under Section 11 of the 1996 Act, the Court has to confine its consideration as to the existence of an arbitration agreement between the parties. If so, whether it would be permissible, while exercising jurisdiction under Section 11, to hold that some of the claims raised are non-arbitrable or fall within excepted category.

7. Sub-section (6A) of Section 11, which was inserted by Act 3 of 2016, with effect from 23.10.2015, makes it clear that while considering an application under sub-section (4) or sub-section (5) or sub-section (6), the Supreme Court or the High Court, as the case may be, shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

8. Act 33 of 2019 omitted sub-section (6A) but the amending Act has not been notified thus far. In consequence, sub-section (6A) of Section 11 of the 1996 Act remains in the statute book.

9. The statement of objects and reasons of the 2015 amendment with reference to insertion of sub-section (6A) in Section 11 of the 1996 Act, reads thus:

> *"(iii) an application for appointment of an Arbitrator shall be disposed of by the High Court or the Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of 60 days.*
>
> *(iv) to provide that while considering any application for appointment of Arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues."*

10. The significance of the use of the expression "not other issues" in the statement of objects and reasons of the 2015 amendment was noticed by a seven-Judge bench of this Court in ***In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899***[5]***,*** and it was observed:

5 2023 INSC 1066

> "209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an Arbitrator shall '*examine the existence of prima facie arbitration agreement and not other issues*'. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings."

11. Relying on the above observations made by this Court in ***In Re: Interplay*** (supra), a three-judge bench of this Court in "***SBI General Insurance Co. Ltd. vs. Krish Spinning***[6]***"*** observed:

> "*114. .... 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 vs. Durga Trading Corporation*** [7] ***(****supra) and adopted in '****NTPC vs. SPML Infra Limited*** [8] ***(****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)".*
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> **Emphasis Supplied**

12. As the above decision has been rendered by a three-Judge bench of this Court after considering the seven-Judge bench decision of this Court in ***In Re: Interplay*** (supra), we are of the view that the respondent cannot profit from certain observations made by a two-Judge bench of this Court in **Emaar (supra)**. In our view, therefore, the High Court fell in error in bisecting the claim of the appellant into two parts, one arbitrable and the other not arbitrable, when it found arbitration agreement to be there for settlement of disputes between the parties. The correct course for the High Court

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6 2024 INSC 532

7 (2021) 2 SCC 1

8 (2023) 9 SCC 385

was to leave it open to the party to raise the issue of non-arbitrability of certain claims before the arbitral tribunal, which, if raised, could be considered and decided by it.

13. The appeal is, therefore, allowed. The order of the High Court to the extent it excludes claims mentioned in para 48 (ii), (iii) and (iv), as referred to in paragraph 8 of the impugned order, is set aside. The parties are, however, at liberty to take the plea of non-arbitrability of certain claims before the arbitral tribunal, which shall decide the same without being prejudice by any observations made in the order of the High Court. There is no order as to costs.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan