



2024:DHC:6341



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

+ ARB.P. 809/2024

DR. RAHUL BHAYANA .....Petitioner

Through: Mr. Anshu Mahajan and Mr.  
Vikash Aggarwal, Advs.

versus

DR. ROHIT BHAYANA & ANR. ....Respondents

Through: Mr. Piyush Ahluwalia and Ms.  
Naina, Advs. for R-1 with R-1 in person  
Ms. Kanika Agnihotri, Mr. Tarun Mehta and  
Mr. Rohit Kumar, Advs. for R-2/DLF Ltd

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**JUDGMENT (ORAL)**

**20.08.2024**

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1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996<sup>1</sup>, for reference of the dispute between the parties to arbitration.

2. The petitioner invokes Clause 55 of the Apartment Buyer Agreement dated 19 May 2017 executed between Respondent 2 DLF Homes Developers Ltd, the party of the first part, and petitioner and Respondent 1 as the party of the second part.

3. I may note here, that, though Respondent 1 Dr. Rohit Bhayana, who appears in person, sought to contend that the petitioner and

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<sup>1</sup> "the 1996 Act" hereinafter



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Respondent 1 were alternatively the parties of the second part and that the agreement was therefore a bipartite and not tripartite agreement, a reading of the opening recital of the agreement does not seem to bear this out.

4. Be that as it may, there is no dispute about the fact that the petitioner, Respondent 1 and Respondent 2 are all signatories to the Apartment Buyer Agreement. The extent to which one or other of the parties may be necessary for adjudication of the dispute is, therefore, an aspect which would have to be left for decision by the arbitral tribunal.

5. The Supreme Court has, in its recent decision in *SBI General Insurance Co Ltd v Krish Spinning*<sup>2</sup>, revisited the entire law relating to Section 11(6) of the 1996 Act. The Supreme Court has held that the position of law which was in existence following earlier decisions rendered by it including the well-known judgment in *Vidya Drolia v Durga Trading Corporation*<sup>3</sup> was required to be revisited in the light of the subsequent judgment of a seven-Judge bench of the Supreme Court in *In re. Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*<sup>4</sup>.

6. Para 114 of the report in *SBI General Insurance Co Ltd* is clear in its mandate, and reads thus:

“114. In view of the observations made by this Court in *In Re. Interplay*, it is clear that the scope of enquiry at the stage of

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<sup>2</sup> 2024 SCC OnLine SC 1754

<sup>3</sup> 2020 SCC OnLine SC 1018

<sup>4</sup> (2024) 6 SCC 1



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*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* and adopted in *NTPC v. SPML Infra Ltd*<sup>5</sup> 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*.”

7. This Court has, in numerous cases, observed that, following *SBI General Insurance*, a Section 11(6) Court can only examine whether there exists an arbitration agreement between the parties. The arbitrability of the dispute that the petitioner seeks to raise, vis-à-vis the arbitration agreement, is not an aspect which a Section 11(6) court can examine. The Supreme Court has also held, in *SBI General Insurance*, that allegations of fraud and pleas that the claims of the petitioner are barred by time, are also aspects which have to be left for consideration by the arbitral tribunal.

8. The only aspect, apart from the existence of an arbitration agreement, which a Section 11(6) court can look into, is whether the petition under Section 11(6) has been filed within three years of the notice issued under Section 21 of the 1996 Act.

9. In the present case, there is no dispute that the notice under Section 21 was issued by the petitioner to the respondents on 4 March 2024. The present petition has been filed within three years from the date of issuance of the said notice.

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<sup>5</sup> (2023) 9 SCC 385



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10. Dr. Rohit Bhayana submits that the dispute that the petitioner seeks to raise is founded on certain e-mails which have nothing to do with the arbitration agreement between the parties. He also raised allegations of fraud which, according to him, may partake of allegations *in rem*, which cannot be decided in arbitral proceedings.

11. Dr. Bhayana also submits that the decision of the Supreme Court in *SBI General Insurance Co Ltd* has to be treated as having rendered in the light of the controversy which was before the court, which was whether an arbitration agreement would survive even if the underlined contract was discharged by accord and satisfaction. According to him, this position is also clear from para 114 of the decision.

12. I am unable to agree. In my view, the issue of whether the arbitration agreement would survive even after discharge of the substantive contract by accord and satisfaction is but one of the aspects with which the Supreme Court has dealt, in the decision in *SBI General Insurance*.

13. Paras 107 to 134 of the report are parenthesized under the heading “judicial interference under the Act, 1996”. The principles contained in paras 107 to 134, according to this Court, encapsulate the entire law, as it exists today with respect to the scope of examination by a Section 11(6) Court, and cannot in any manner be restricted to the issue of the position which would arise in a case where accord and satisfaction applies.



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**14.** In the opinion of this Court, following *SBI General Insurance Co Ltd*, these aspects cannot be examined by a court exercising jurisdiction under Section 11(6). They are all matters which have to be considered by the arbitral tribunal.

**15.** Ms. Kanika Agnihotri, learned Counsel who appears for Respondent 2, has no principal objection to the disputes being referred to arbitration, but submits that her client has nothing to do with the *lis* which is in the nature of an *inter se* dispute between the petitioner and Respondent 1.

**16.** There is, however, no gainsaying the fact that Respondent 2 is also a signatory to the Apartment Buyer Agreement. Needless to say, it would be open to Respondent 2 to seek deletion of its name from the array of parties before the arbitral tribunal which, if and when such a request is made, would take an informed decision thereon.

**17.** In view of the aforesaid discussion and keeping in mind the fact that there is an arbitration agreement between the parties, and as the parties have not been able to arrive at consensus regarding the dispute, the court cannot but exercise jurisdiction under Section 11(6) of the 1996 Act and refer the dispute between the parties to arbitration.

**18.** This Court accordingly, appoints Ms. Saloni Mahajan, Advocate (Mob: 9958407969) as the arbitrator to arbitrate on the disputes between parties.



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**19.** The learned arbitrator would be entitled to charge fees as per the Fourth schedule to the 1996 Act.

**20.** The learned Arbitrator is also directed to submit the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

**21.** The petition is allowed in the aforesaid terms.

**C. HARI SHANKAR, J.**

**AUGUST 20, 2024**

*dsn*

*Click here to check corrigendum, if any*