
Scope of Section 11 of the Arbitration Act: Referral Courts Must Limit Enquiry to Existence of Arbitration Agreement Holds Delhi High Court

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Introduction

In *Indraprastha Gas Ltd. v. Chintamani Food and Snacks* [Arb. P. No. 355 of 2024], the Delhi High Court appointed a sole arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, and reaffirmed that the role of a referral court at the stage of appointment is confined to examining whether a *prima facie* arbitration agreement exists between the parties. The judgment reiterates that contentious issues such as novation, arbitrability, or applicability of the arbitration clause fall within the exclusive domain of the arbitral tribunal.

The case stemmed from a dispute over alleged under-recovery of tariff in a prepaid gas supply arrangement. The respondent opposed reference to arbitration, arguing that no ongoing dispute existed and that the arbitration clause was inapplicable following a transition to a prepaid supply model. Rejecting these arguments, the High Court held that once an arbitration clause is established, more detailed questions regarding the contract's scope or performance should be decided by the arbitrator rather than the referral court.

Brief Facts

Indraprastha Gas Ltd. (IGL) entered into a gas supply agreement with Chintamani Food and Snacks (the respondent), under which gas was to be supplied on a post-paid basis. The agreement included an arbitration clause providing for reference of disputes to a sole arbitrator. Subsequently, the respondent requested a shift to a prepaid supply arrangement. IGL agreed to this modification but continued to raise periodic invoices, contending that the prepaid amounts did not cover the full tariff applicable under the agreement.

A dispute arose when IGL raised a demand for alleged shortfall in tariff payments. The respondent denied any liability, stating that no outstanding dues existed and that the contractual framework had been modified. IGL issued a notice invoking arbitration under the agreement and nominated a sole arbitrator. The respondent did not concur, prompting IGL to file a petition under Section 11 of the Arbitration Act, before the Delhi High Court.

The respondent opposed the petition, contending that no arbitrable dispute existed since the parties had agreed to a prepaid model, effectively superseding the terms of the earlier post-paid agreement. It was also argued that the alleged dues did not give rise to a live dispute capable of reference to arbitration.

Issues and Submissions

The principal issue before the High Court was whether a valid arbitration agreement existed between the parties and whether a reference to arbitration could be made

under Section 11 of the Arbitration Act. The case also raised a secondary question as to the scope of judicial scrutiny at the stage of appointment of an arbitrator.

IGL, as the petitioner, submitted that the original agreement between the parties contained a clear and unambiguous arbitration clause. It was argued that the existence of this clause had not been disputed. According to IGL, the mere fact that the billing arrangement had shifted to a prepaid model did not constitute novation or extinguishment of the underlying agreement. Any such contention, it was argued, involved a mixed question of fact and law that ought to be decided by the arbitrator and not the referral court.

IGL further submitted that the dispute regarding under-recovery of tariff was genuine, as the prepaid payments did not fully cover the applicable tariff rates. It was contended that the respondent's denial of liability demonstrated the existence of a live dispute, which ought to be resolved through arbitration as per the agreement.

The respondent opposed the petition on the ground that no arbitrable dispute existed. It was submitted that IGL had unilaterally raised demands without any contractual basis, and that the arrangement between the parties had shifted materially when the prepaid model was introduced. The respondent argued that the arbitration clause was no longer applicable in light of the modified arrangement, and that the High Court should decline reference on this ground.

Findings of the High Court

The High Court allowed the petition under Section 11 and appointed a sole arbitrator to adjudicate the dispute. Relying on the Supreme Court's judgment in ***Vidya Drolia v. Durga Trading Corporation*** [(2021) 2 SCC 1], the High Court reiterated that at the stage of considering a petition for appointment of an arbitrator, the role of the referral court is confined to a prima facie examination of the existence of an arbitration agreement. The High Court is not required to conduct a detailed analysis of the merits of the dispute or examine complex questions relating to the interpretation of the contract.

Applying this principle, the High Court noted that the gas supply agreement contained a valid and operative arbitration clause. The respondent did not deny the existence of the agreement but contended that it had been replaced or rendered inapplicable. The High Court held that such a contention went to the issue of arbitrability and required factual adjudication. These were not matters to be decided at the Section 11 stage.

The High Court further held that the mere transition to a prepaid model did not, on the face of the record, extinguish the contractual relationship or the arbitration clause embedded in the original agreement. Whether the arrangement had been novated or altered in a manner that excluded arbitration was a disputed matter that fell within the competence of the arbitral tribunal.

Finally, the High Court observed that the dispute regarding shortfall in tariff recovery was neither illusory nor frivolous. The exchange of correspondence and the parties' divergent positions indicated the presence of a live dispute. Accordingly, the

High Court appointed a sole arbitrator and left all other questions, including jurisdiction, novation, and quantification, to be decided by the tribunal.

Comment

The decision in *Indraprastha Gas Ltd. v. Chintamani Food and Snacks (supra)* affirms the settled position that a court acting under Section 11 of the Arbitration Act, must confine its enquiry to the existence of an arbitration agreement. The judgment is a straightforward application of the principle articulated in *Vidya Drolia (supra)*, namely that matters involving disputed questions of fact, such as novation or the scope of an agreement, are best left to the arbitral tribunal.

What distinguishes this judgment is the High Court's measured handling of the respondent's novation argument. Rather than rejecting it outright, the High Court recognised that the argument was not without substance but was not one capable of being adjudicated at the pre-arbitral stage. This approach ensures that potentially complex commercial disputes are not prematurely foreclosed by preliminary judicial scrutiny but instead progress through the mechanism agreed upon by the parties.

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