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Supreme Court of India holds that the issue of non-arbitrability can be considered and decided by the arbitral tribunal

The Hon'ble Supreme Court of India ("**Supreme Court**"), in the case of ***Office for Alternative Architecture vs. IRCON Infrastructure and Services Limited***[1], ("**Civil Appeal**") re-affirmed that Section 11 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") grants limited scope of interference to the court and confines the examination, at the stage of appointment of arbitral tribunal, to the existence of an arbitration agreement. Further, the Supreme Court also held that the claims of a party cannot be bisected into arbitrable and non-arbitrable claims in an application under Section 11 of the Arbitration Act.

Brief facts

1. The Office for Alternative Architecture ("**Appellant**") filed an application under Section 11 of the Arbitration Act before the High Court of Delhi ("**Delhi HC**") for appointment of arbitral tribunal.
2. The Delhi HC allowed such application. However, while appointing the arbitral tribunal, the Delhi HC excluded certain claims as being non-arbitrable. The Delhi HC came to a finding that in terms of the agreement between the parties, i.e., the Appellant and IRCON Infrastructure and Services Limited ("**Respondent**"), certain claims would fall under 'excepted matters' and would thus be excluded from the scope of arbitration.
3. The Appellant, aggrieved by such bifurcation, filed the Civil Appeal before the Supreme Court.
4. The Appellant contended that in an application under Section 11 of the Arbitration Act, the court only has the power to examine whether the arbitration agreement exists or not. If it exists, the arbitral tribunal is to be appointed. Thereafter, the arbitral tribunal has the jurisdiction to decide whether the claims fall within 'excepted' category or not. It must thus be left open to the parties to raise such pleas before the arbitral tribunal.
5. The Respondent, *per contra*, argued that the Delhi HC was empowered to exclude non-arbitrable claims before referring a party to arbitration or appointing an arbitral tribunal.

Issue

Whether while exercising power under Section 11 of the Arbitration Act, the court must confine its consideration to the existence of an arbitration agreement between the parties. If so, whether it would be permissible, while exercising

[1] 2025 INSC 665 (decided on May 13, 2025)

jurisdiction under Section 11 of the Arbitration Act, to hold that some of the claims raised are non-arbitrable or fall within excepted category?

Findings and analysis

Re: Section 11(6A) of the Arbitration Act only envisages examination as to existence of an arbitration agreement

1. The Supreme Court relied on the statutory provisions, particularly Section 11(6A) of the Arbitration Act and observed that the provision makes it clear that while considering an application for appointment of arbitrator, the court must confine to the examination of the existence of an arbitration agreement and not transgress into other issues.
2. The Supreme Court also referred to a 7 (seven) judge bench decision in *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*[2], wherein it was clarified that the court exercising powers under Section 11 of the Arbitration Act must not dwell on *other issues* which are a consequence of unnecessary judicial interference in the arbitration proceedings.
3. In *SBI General Insurance Company Limited vs. Krish Spinning*[3] it was observed that the jurisdiction of a referral court under Section 11 of the Arbitration Act does not extend to weeding out *ex-facie* non-arbitrable and frivolous disputes.
4. Thus, the Supreme Court held that the Delhi HC fell in error by extending the scope of interference granted under Section 11 of the Arbitration Act and holding certain claims as non-arbitrable.

Re: Arbitral tribunal has jurisdiction to decide on the issue of non-arbitrability of claims

1. When an arbitration agreement for settlement of disputes was found to be present, the correct course for the Delhi HC was to refer the dispute to arbitration by appointing the arbitral tribunal and leave the issue of non-arbitrability open to be raised before the arbitral tribunal.
2. The Supreme Court held that the Delhi HC could not have bisected the claim of the Appellant in 2 (two) parts – arbitrable and non-arbitrable – as such decision falls within the scope and jurisdiction of the arbitral tribunal.

Conclusion

The Civil Appeal was allowed by the Supreme Court and the order of the Delhi HC to the extent it excluded certain claims from reference to arbitration was set aside. Thus, effectively, the Supreme Court referred all the claims/disputes raised by the Appellant to arbitration and granted leave to the parties to raise the plea of non-arbitrability of certain claims before the arbitral tribunal.

The judgment of the Supreme Court confirms that if the court is reasonably convinced that:

1. a valid arbitration agreement exists between the parties or the agreement provides for resolution of disputes by arbitration; and
2. a dispute has arisen between the parties;

[2] 2023 INSC 1066
[3] 2024 INSC 532

then it must strictly follow the course of appointing the arbitral tribunal. The court must limit its observations to the prima-facie examination of the existence of an arbitration agreement and not undertake the exercise of in-depth review of the facts of the case.

The view also upholds and advances the doctrine of 'Kompetenz-Kompetenz', which means that the arbitral tribunal can rule on its own jurisdiction and decide whether a particular issue/claim is arbitrable either in terms of the agreement or in terms of legal and statutory bars. This ruling thus reinforces the limited judicial role at the pre-arbitral stage and strengthens party autonomy and institutional efficiency in arbitration proceedings.

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