

**ARB-363-2018 (O&M) & ARB-364-2018 (O&M)****-1-**

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

208 (2 cases)**ARB-363-2018 (O&M)****Date of Decision: 30.07.2025****Shinder Singh Dhillon****...Applicant**

Versus

Sherwood Officers Society (Regd.)**...Respondent**

And

ARB-364-2018 (O&M)**Shinder Singh Dhillon****...Applicant**

Versus

Sherwood Officers Society (Regd.)**...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL****Present: - Mr. Chetan Bansal, Advocate for the applicant****Mr. T.S. Khaira, Advocate for the respondent***********JAGMOHAN BANSAL, J. (Oral)**

1. As common issues are involved in the captioned applications, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *ARB-363-2018*.



2. Through instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short '**1996 Act**'), the applicant is seeking appointment of an Arbitrator.

3. The parties entered into arbitration agreement dated 25.11.2010 (Annexure P-1). A dispute erupted between the parties. The applicant served notice upon the respondent seeking resolution of dispute through Arbitral Tribunal but to no avail.

4. Learned counsel for the respondent submits that as per agreement the respondent was supposed to hand over three flats within 20 months. The agreement was executed in 2010, thus, for all intents and purposes 20 months period expired in 2012. The applicant woke up in 2016 and issued alleged letter dated 05.02.2016. The notice invoking arbitration was issued on 07.03.2018. The receipt of those letters is disputed, thus, claim of the applicant is hopelessly barred by limitation.

5. After noticing judicial precedents, the Supreme Court in **BGM & M-RPL-JMCT (JV) v. Eastern Coalfields Ltd., 2025 SCC OnLine SC 1471** has deduced scope of Referral Court's power under Section 11(6) of 1996 Act as below: -

"15. The legal principles deducible from the above decision qua the scope of Referral Court's power under Section 11 of 1996 Act are as follows:

(a) Section 11 confines the Court's jurisdiction to the examination regarding the existence of an arbitration agreement.

(b) The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination.



- (c) *Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Such a legal approach will help the Referral Court in weeding out prima facie non-existent arbitration agreements.*
- (d) *The purport of using the word “examination” connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. However, the expression “examination” does not connote or imply a laborious or contested inquiry.*
- (e) *The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. Only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal.*
- (f) *Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, when the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award is bound by such a prima facie view. If*



a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth.”

In view of above, the scope of determining disputed questions by the Court under Section 11(6) of 1996 Act is very limited. It is the Arbitral Tribunal which has to determine all disputed questions including issue of limitation and jurisdiction.

6. Conditions to invoke power conferred by Section 11(6) of 1996 Act stand satisfied, thus, I hereby appoint a Sole Arbitrator to adjudicate the dispute between the parties.

7. Mr. Jaspal Verma, Additional District and Sessions Judge (Retd.), residing at House No.179, Hardyal Nagar, Garha Road, Jalandhar City, Punjab- 144022, Mobile No.8558855179 & 7888823330 is hereby appointed as a Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements. The learned Arbitrator is requested to comply with mandate of Section 12 of 1996 Act before proceeding further.

8. The parties at the first instance will appear before the Arbitrator on 14.08.2025 at 10:00 AM and thereafter, as directed by learned Arbitrator.

9. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the 1996 Act, as amended.

10. The Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the 1996 Act.



11. Needless to mention, parties would be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.
12. A request letter along with copy of this order be sent to Mr. Jaspal Verma.
13. Pending application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

30.07.2025
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No