IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ARB-154-2021 (O&M)
Date of decision: **19.12.2025**

Ms SAB Industries Limited

…….Applicant(s)

Versus

Union of India and another

….Respondent(s)

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE

Present: Mr. P.S. Rana, Advocate
for the applicant(s).

Mr. Arvind Seth, Senior Panel Counsel
for the respondent(s).

****

SHEEL NAGU, CHIEF JUSTICE (Oral)

1. Instant application u/s 11 (6) of Arbitration and Conciliation Act, 1996 (for short, '1996 Act'), seeks appointment of an independent Arbitrator.

2. The rival Parties herein entered into agreement/work order and tender document dated 01.03.2017 (Annexure A-1) containing an arbitration clause as follows:

> "**64 (1) (i)** In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the "excepted matters" referred to in Clause 63 of these Conditions, the contractor, after 120 days but within 180 days of his

AJAY PRASHER
2025.12.26 16:00
I attest to the accuracy and
integrity of this document

presenting his final claim disputed matter shall demand in writing that the dispute or difference be referred to arbitration.

64 (1) (ii) The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute(s) or difference(s) in respect of which the demand has been made together with counter claims or set off, given by the Railway, shall be referred to arbitration and other matters shall not be included in the reference.

64 (1) (iii) (a) The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.

(b) The claimant shall submit his claim stating the facts supporting the claims alongwith all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

(c) The Railway shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal thereafter, unless otherwise extension has been granted by Tribunal.

(d) Place of Arbitration: The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.

64 (1) (iv) No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.

64 (1) (v) If the contractor(s) does/do not prefer his/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Railways that the final bil is ready for payment, he/they will be deemed to have waived his/their claim(s) and the Railway shall be discharged and released of all liabilities under the contract in respect of these claims.

64 (2) Obligation During Pendency of Arbitration Work under the contract shall, unless otherwise directed by the Engineer, continue during the arbitration proceedings, and no payment due

AJAY PRASHER
2025.12.26 16:00
I attest to the accuracy and
integrity of this document

or payable by the Railway shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not such work should continue during arbitration proceedings.

64 (3) Appointment of Arbitrator:

64 (3) (a) (i) In cases where the total value of all claims in question added together does not exceed Rs.25,00,000 (Rupees twenty five lakh only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be Gazetted Officer of Railway not below JA Grade, nominated by the General Manager. The Sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by GM.

64 (3) (a) (ii) In cases not covered by the Clause 64 (3) (a) (i), the Arbitral Tribunal shall consist of Panel of three Gazetted Railway Officers not below JA Grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade off the Accounts Department shall be considered of equal status to the officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator.

64 (3)(a)(iii) xxx xxx xxx

AJAY PRASHER
2025.12.26 16:00
I attest to the accuracy and
integrity of this document

64 (3)(a)(iv)	**xxx**	**xxx**	**xxx**
64 (3)(a)(v)	**xxx**	**xxx**	**xxx**
64 (3)(b)(i)	**xxx**	**xxx**	**xxx**
64 (3)(b)(ii)	**xxx**	**xxx**	**xxx**
64 (3)(b)(ii)	**xxx**	**xxx**	**xxx**
64 (4)	**xxx**	**xxx**	**xxx**
64 (5)	**xxx**	**xxx**	**xxx**
64 (6)	**xxx**	**xxx**	**xxx**
64 (7)	**xxx**	**xxx**	**xxx"**

2.1 Dispute erupted between the parties. The applicant served notice upon respondent seeking resolution of dispute through Arbitral Tribunal but to no avail.

3. The respondents could not dispute the existence and execution of arbitration agreement, exhaustion of remedy by applicant under the arbitration clause in the agreement between rival parties, service of notice, dispute being arbitrable and the dispute not being a deadwood.

4. The respondents had relied upon the judgment of Hon'ble Supreme Court in ***Central Organisation for Railway Electrification v/s M/s Eci-spec-smo-mcml (jv) A joint Venture Co. , 2019 SCC OnLine SC 1635*** decided on 17.12.2019. However, the said judgment was referred to a larger bench of the Hon'ble Supreme Court via ordered dated 11.01.2021 in ***Union of India v/s M/s Tantia Constructions Ltd. (Petition for Special leave to Appeal (C) No. 12670/2020)*** to look into its correctness of the same.

4.1 In light of the above, this court adjourned the case *sine dine* via its order dated 01.09.2023 till the matter was decided by the Apex Court. Five Judges of the Apex Court decided the matter on 08.11.2024 in judgment titled ***Central Organisation for Railway Electrification v/s M/s ECI-SPEC-SMO-MCML (JV) A Joint***

AJAY PRASHER
2025.12.26 16:00
I attest to the accuracy and
integrity of this document

Venture Co. , 2024 SCC OnLine SC 3219 and the Petitioner thereafter filed CM-20956-CII-2024 praying for final hearing of ARB-154-2021 in light of the decision of the Apex Court.

4.2 In light of the above and the mandate of Section 12(5) r/w Seventh Schedule of 1996 Act, Retired Railway officers, being employees of respondent-Department, stand disqualified from being appointed as nominee arbitrators. The petitioner at all stages, sought appointment of an independent arbitrator having no association with Railways and had expressly denied any waiver of the said statutory ineligibility. Therefore, in view of the above, rival parties have agreed to the appointment of a Sole Arbitrator to adjudicate the disputes.

5 . The law on the scope of examination u/s 11 (6) of 1996 Act is well settled. The Apex Court in ***Vidya Drolia Vs. Durga Trading Corporation, (2021) 2 SCC 1*** (para 154.2, 154.3 and 154.4) held that the Court may undertake a prima facie examination at this stage and reject an application where it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable. In this context, the relevant extract of the said judgment is as follows :-

> *"154.2 Scope of judicial review and jurisdiction of the Court under Sections 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.*
>
> *154.3 The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of*

AJAY PRASHER
2025.12.26 16:00
I attest to the accuracy and
integrity of this document

non-arbitrability. The court has been conferred power of "second look" on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34 (2) (a) or sub clause (i) of Section 34 (2) (b) of the Arbitration Act.

154.4 Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is ***non existent, invalid or the disputes are non-arbitrable,*** *though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably "non arbitrable" and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism."*

Further in the case of ***Vidya Darolia's case*** (supra) it was held as under:

"244. Before we part, the conclusions reached, with respect to Question 1, are :

AJAY PRASHER
2025.12.26 16:00
I attest to the accuracy and
integrity of this document

> *244.1 Sections 8 and 11 of the Act have the same ambit with respect to judicial interference.*
>
> *244.2* ***Usually, subject matter arbitrability cannot be decided at the stage of Section 8 or 11 of the Act, unless it is a clear case of deadwood.***
>
> *244.3 The court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of non existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding.*
>
> *244.4 The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above i.e. "when in doubt, do refer".*
>
> *244.5 The scope of the court to examine the prima facie validity of an arbitration agreement includes only :*
>
> *244.5.1 Whether the arbitration agreement was in writing? Or*
>
> *244.5.2 ----------*
>
> *244.5.3 Whether the core contractual ingredients qua the arbitration agreement were fulfilled?*
>
> *244.5.4 On rare occasions, whether the subject matter of dispute is arbitrable?"*

6. In ***NTPC Ltd. Vs. SPML Infra Ltd. (2003) 2 SCC 453,*** the Apex Court while relying on the principle laid down in ***Vidya Drolia*** (supra) judgment, has reiterated :

> *"26. As general rule and a principle, the arbitral tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. As an exception to the rule, and rarely as a demurrer, the referral court may*

AJAY PRASHER
2025.12.26 16:00
I attest to the accuracy and
integrity of this document

> *reject claims which are manifestly and ex-facie non-arbitrable."*

7. Similarly, in ***DLF Home Developers Ltd. Vs. Rajapura Homes (P) Ltd., (2021) 2 SCC 675,*** the Apex Court reiterated that :

> *"19. To say it differently, this Court or a High Court, as the case may be, are not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen Arbitrator. On the contrary, the Court(s) are obliged to apply their mind to the core preliminary issues, albeit, within the framework of Section 11 (6-A) of the Act. Such a review, as already clarified by this Court, is not intended to usurp the jurisdiction of the Arbitral Tribunal but is aimed at streamlining the process of arbitration. Therefore, even when an arbitration agreement exists, it would not prevent the court to decline a prayer for reference if the dispute in question does not correlate to the said agreement."*

8. Pre-requisites for invoking power u/s 11 (6) of 1996 Act appear to be satisfied.

9. Accordingly, this application is allowed.

9.1 Therefore, in accordance with the agreement arrived at between the parties during proceedings of this case, Mr. Justice Ravi Shankar Jha, former Chief Justice of Punjab and Haryana High Court, residing at House No. 913, Old B-68, Pandit Lajja Shankar Jha, Wright Town, Jabalpur, 482001, Mobile No. 94251-53362, is hereby appointed as Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements under 1996 Act before proceeding ahead.

AJAY PRASHER
2025.12.26 16:00
I attest to the accuracy and
integrity of this document

10. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by the Arbitrator at her/his convenience.

11. The Arbitrator is appointed with the liberty to determine jurisdiction and rule on any objections including objections with respect to the existence or validity of the arbitration agreement and the scope of the Arbitrator's authority in accordance with Section 16 of the 1996 Act.

12. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of 1996 Act, as amended from time to time, or fee as agreed to by the parties.

13. The Arbitrator is requested to complete the arbitral proceedings as per time limit stipulated u/s 29-A of 1996 Act.

14. Any observation made hereinabove is meant merely for passing this order and shall not be construed as expression on merits of the dispute.

15. A request letter along with copy of this order be sent to Mr. Justice Ravi Shankar Jha, former Chief Justice of Punjab and Haryana High Court.

(SHEEL NAGU)
CHIEF JUSTICE

19.12.2025
Ajay Prasher

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

AJAY PRASHER
2025.12.26 16:00
I attest to the accuracy and
integrity of this document