

2025:PHHC:150426



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

**ARB-137-2025 (O&M)
Date of decision : 31.10.2025**

M/s Paras Nutritions Pvt. Ltd.

.....Applicant

Versus

M/s G.S. Developers & Contractors Pvt. Ltd.

.....Respondent

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

Present: Mr. Ranjit Singh Kalra, Advocate,
and Ms. Mona Yadav, Advocate,
for the applicant.

Mr. Nishant Walia, Advocate,
for the respondent.
(Through Video Conferencing).

SHEEL NAGU, CHIEF JUSTICE (Oral)

1. Instant application u/s 11 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 04.01.2023 (Annexure A-1) containing an arbitration clause as follows :

“68.1 All disputes or differences whatsoever which shall at any time arise between the parties hereto on the construction of this agreement or any clause herein contained or any matter in any way connected therewith or the rights, duties, obligations of the parties hereto shall within 3 months of the written

notices of such difference(s) being given by one party to the other be finally referred to the adjudication of the Sole Arbitrator to be appointed by PNPL. PNPL shall then finalize a panel of three arbitrators and the intimation shall be sent to the Contractor to enable the Contractor to choose and confirm his acceptance to the appointment of one arbitrator from the panel. If the contractor fails to communicate his selection of the name, within the stipulated period, PNPL shall select one arbitrator from the list and appoint him as the sole arbitrator. If PNPL fails to send such a list within thirty days, as stipulated, the Contractor shall send a similar list to PNPL within fifteen days. PNPL shall then select one arbitrator from the list and appoint him as the sole arbitrator within fifteen days. If PNPL fails to do so the Contractor shall communicate to PNPL the name of one officer from the panel who shall then be the Sole Arbitrator. The appointment of the Sole Arbitrator so made shall be final and conclusive.”

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. Mr. Nishant Walia, Advocate, counsel for the respondent could not dispute, execution of arbitration agreement, exhaustion of remedy by applicant under the arbitration clause in the agreement between rival parties, service of notice, dispute between the parties being arbitrable and the cause not being a deadwood.

4. 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 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 :

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?”

5. 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 reject claims which are manifestly and ex-facie non-arbitrable.”

6. 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.”

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

8. Accordingly, this application is allowed.

8.1 Ms. Justice Manjari Nehru Kaul, former Judge of this Court, residing at House No. 115, Sector 24, Chandigarh, Mobile No. 9501041234, 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.

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

10. The Arbitrator is appointed with the liberty to determine its own jurisdiction, including ruling on any 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.

11. 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.

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

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

14. A request letter along with copy of this order be sent to Ms. Justice Manjari Nehru Kaul, former Judge of this Court.

(SHEEL NAGU)
CHIEF JUSTICE

October 31, 2025
Ajay Prasher

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