



ARB-97-2019 (O&M) and connected cases

203 (6 cases)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1.

ARB-97-2019 (O&M)

M/S A2Z INFRA ENGINEERING LTD.

....Petitioner

Versus

THE NAKADOR COOPERATIVE SUGAR MILLS LTD. AND OTHERS

...Respondents

2.

ARB-98-2019 (O&M)

M/S A2Z INFRA ENGINEERING LTD.

....Petitioner

Versus

THE MORINDA COOPERATIVE SUGAR MILLS LTD. AND OTHERS

...Respondents

3.

ARB-99-2019 (O&M)

M/S A2Z INFRA ENGINEERING LTD.

....Petitioner

Versus

THE FAZILKA COOPERATIVE SUGAR MILLS LTD. AND OTHERS

...Respondents

4.

ARB-341-2024 (O&M)

A2Z INFRA ENGINEERING LIMITED AND ANOTHER

....Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

5.

ARB-373-2024 (O&M)

A2Z INFRA ENGINEERING LIMITED AND ANOTHER

....Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

6.



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ARB-374-2024 (O&M)

A2Z INFRA ENGINEERING LIMITED AND ANOTHER

....Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

Date of decision: 05.12.2025

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

Present: Mr. Kunal Dawar, Senior Advocate, (Arguing counsel)
 Mr. Gaurav Rai, Advocate, and
 Ms. Shruti Mandhotra, Advocate,
 for the applicants.

Mr. Vikas Singh, Senior Advocate, (Arguing counsel)
 Ms. Anamika Sheoran, Advocate
 for respondent–Sugar Mill.

Mr. A.D.S. Jattana, Advocate, (through VC)
 for respondent No.2 – PEDDA.

Mr. Ajit Pal Singh Mandher, Addl. Advocate General, Punjab.

Mr. R.P.S. Bara, Advocate, (Arguing counsel) (through VC)
 Mr. Opinderpal Singh, Advocate
 for respondent No.5 – PSPCL
 in ARB-341-2024, ARB-373-2024 and ARB-374-2024.

SHEEL NAGU, C.J. (Oral)

1. This common order shall dispose of above stated six (06) applications as the issue involved in all these applications is similar. For the sake of brevity, facts are being derived from ARB-97-2019.

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

2. Replies filed on behalf of respondents in ARB-97-2019, ARB-98-2019, ARB-99-2019, ARB-373-2024, ABR-374-2024 and ARB-341-2024 are taken on record and perused.



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3. In ARB-97-2019, ARB-98-2019, and ARB-99-2019, the rival parties herein entered into a Memorandum of Understanding cum agreement dated 12.01.2009 containing an arbitration clause as follows:

“11.2 All disputes arising under the contract shall be referred to Arbitrator, who will be the Registrar, Cooperative Societies, Punjab, who shall act in accordance with the provisions of the Arbitration and Conciliation Act, 1996. In case dispute cannot be resolved through negotiations, then the aggrieved party can file claim petition before the aforesaid Arbitrator.”

3.1 In ARB-373-2024, ABR-374-2024 and ARB-341-2024, the rival parties invoked Arbitration while relying on arbitration clause contained in interlinking agreement/umbrella agreement i.e. Implementation Agreement dated 27.06.2011 (in ARB-373-2024 & ABR-374-2024) and 13.08.2010 (in ARB-341-2024) containing an arbitration clause as follows:

“12 RESOLUTION OF DISPUTES

12.1 The parties shall attempt to resolve any dispute, arising out of or in connection with this agreement (hereinafter referred as the dispute) by mutual discussion. In the event that any dispute cannot be resolved between the parties with in a period of 30 days of the commencement of the discussions, then such dispute shall be settled under the Arbitration & Reconciliation Act 1998. The arbitration shall be conducted at Chandigarh, India in English language. Any award given by the arbitrators shall be final and binding on the parties and shall be in lieu of any other remedy within the meaning of arbitration and reconciliation Act 1996.

12.2 The matter would be referred to an arbitral tribunal of three arbitrators. Each party shall appoint one arbitrator who shall act as the



Chairman of the arbitral tribunal, in the event either party failing to appoint the arbitrator or the two arbitrators failing to appoint the Chairman of the arbitral tribunal the appointment of the arbitrators or the Chairman as the case may be shall be done in accordance with Arbitration & Reconciliation Act 1996. The tribunal shall give a speaking award. The cost and expenses of this arbitration shall be allocated as determined by the arbitrators.

12.3 ...

12.4. ...”

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

4. Mr. Kunal Dawar, Senior Advocate, counsel for applicant/petitioner submits that proceedings initiated in ARB-373-2024, ABR-374-2024 and ARB-341-2024 are distinct from the proceedings already commenced and concluded by way of Award dated 24.12.2020.

4.1 Learned Counsel for respondents could not dispute execution of arbitration agreements, exhaustion of remedy by applicant under the arbitration clause in the agreements between rival parties, service of notice, dispute between the parties being arbitrable and the cause not being a deadwood.

5. Parties herein have collectively agreed to the appointment of a sole Arbitrator to adjudicate disputes in all the matters, forgoing the requirement of a three member tribunal as per the agreements dated 27.06.2011 (in ARB-373-2024 & ABR-374-2024) and 13.08.2010 (in ARB-341-2024).

6. The law in regard to interpretation of section 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.”

6.1 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?”*

7. 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.”

8. 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.”

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

10. Accordingly, these applications are allowed.

10.1 Hon’ble Mr. Justice M.M. Kumar, former Chief Justice of Jammu



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and Kashmir High Court, residing at House No.575, Sector 16-D, Chandigarh, Mobile No.7080888888, 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.

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

12. The Arbitrator is appointed with the liberty to determine jurisdiction and ruling 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.

13. 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.

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

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

16. A request letter along with copy of this order be sent to Hon'ble Mr.Justice M.M. Kumar.

17. Pending applications, if any, shall stand disposed of accordingly.

(SHEEL NAGU)
CHIEF JUSTICE

05.12.2025

mohit goyal

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