IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ARB-261-2025 (O&M)

Date of decision : 27.10.2025

M/s Asenger Construction Private Limited

…….Applicant

Versus

M/s SRMK Healthcare Pvt. Ltd., Mohali

….Respondent

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

Present: Mr. Varun Veer Chauhan, Advocate,
for the applicant.

None for the respondent.

****

SHEEL NAGU, CHIEF JUSTICE (Oral)

1. Instant application u/s 11 (5) and (6) of Arbitration and Conciliation Act, 1996 ('Act of 1996' for brevity), seeks appointment of Arbitrator.

2. Reply filed by the respondent has been perused.

3. The rival parties herein entered into agreement dated 22.09.2023 (Annexure P-1) containing an arbitration clause as follows :

> *"20. In case of any dispute or claim arising out of this agreement, the same shall be referred to the sole Arbitrator under the provisions of the Arbitration and Conciliation Act, 1996, who shall be mutually appointed by both the parties. The place of Arbitration shall be Mohali only. The decision of the said Arbitration shall be final and binding on both the parties."*

NAROTAM DASS
2025.11.04 17:21
I attest to the accuracy and
authenticity of this order/judgment

3.1 Dispute erupted between the parties. The applicant served notice dated 10.05.2024 (Annexure P-16) upon respondent seeking resolution of dispute through Arbitral Tribunal, but to no avail.

4. None has appeared on behalf of the respondent. Even otherwise, there is nothing on record to 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.

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*** (paragraphs 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.*

NAROTAM DASS
2025.11.04 17:21
I attest to the accuracy and
authenticity of this order/judgment

> *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 ***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*

NAROTAM DASS
2025.11.04 17:21
I attest to the accuracy and
authenticity of this order/judgment

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 xxx xxx xxx

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 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

NAROTAM DASS
2025.11.04 17:21
I attest to the accuracy and
authenticity of this order/judgment

> *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 Mr. Justice Pritam Pal, former Judge of this Court, residing at House No. 665, Sector 11-B, Chandigarh, Mobile No. 94631 22333, is hereby appointed as Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of all mandatory statutory requirements under 1996 Act before proceeding ahead.

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

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

NAROTAM DASS
2025.11.04 17:21
I attest to the accuracy and
authenticity of this order/judgment

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 Pritam Pal, former Judge of this Court.

16. All the pending applications stand disposed of.

(SHEEL NAGU)
CHIEF JUSTICE

October 27, 2025
ndj

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

NAROTAM DASS
2025.11.04 17:21
I attest to the accuracy and
authenticity of this order/judgment