



ARB-267-2025

-1-

289

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

ARB-267-2025

Date of Decision: 11.12.2025

Dr. Sukhsagar Ratol

..... Petitioner

Versus

Dr. Tanya Mishra Dixit

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vaibhav Sharma, Advocate
Ms. Salina Chalana, Advocate
Mr. Harit Narang, Advocate &
Ms. Manveen Narang, Advocate,
for the petitioner.

Ms. Supriya Garg, Advocate
for the respondent.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') praying for appointment of an Arbitrator to adjudicate the disputes which have arisen between the parties.

2. Learned counsel for the petitioner submitted that a Unit Franchise Agreement dated 17.04.2024 was executed between the petitioner and the respondent wherein exists a valid arbitration clause i.e. Article 27 (4). He further submitted that the said clause provides that in case any dispute arises between the parties relating to performance or non-performance of the rights and obligations set forth herein or the breach, termination, invalidity or interpretation thereof, the same shall be referred for arbitration at Chandigarh in accordance with the Act. He further

**ARB-267-2025****-2-**

submitted that when the dispute arose between the parties, the petitioner invoked the aforesaid arbitration clause and also proposed the name of an Arbitrator by issuing a legal notice dated 05.09.2024 to the respondent vide Annexure P-6 which has been sent through a registered post but the respondent refused to receive the same. It was thereafter again for the second time, another legal notice was issued to the respondent vide Annexure P-10 dated 18.03.2025 and this time, the respondent replied to the notice vide Annexure P-11 dated 06.04.2025 wherein it was so stated that the agreement is a draft template and nothing contained in the draft template shall be construed as legal advice and it was further stated in the reply that the arbitration clause can be invoked only when there is a valid contract between the parties although the same was signed by both the parties but it was not a valid contract because it was only a draft template and therefore, the respondent did not agree for the arbitration mechanism.

3. Learned counsel for the petitioner further submitted that the aforesaid reasoning given by the respondent in the reply that the agreement (Annexure P-1) was merely a draft template, although signed by both the parties, is demolished in view of the fact that the respondent itself terminated the said Agreement by giving a notice to the petitioner vide Annexure P-5 by making reference to the aforesaid Agreement and in that notice (Annexure P-5), the respondent expressly referred to the Agreement dated 17.04.2024 and terminated it, while also mentioning various transactions between the parties. Therefore, now the respondent is estopped from taking such a plea that the aforesaid Agreement (Annexure P-1) was not binding upon the parties because it was only a draft template.

4. On the other hand, Ms. Supriya Garg, learned counsel for the



ARB-267-2025

-3-

respondent submitted that the present petition under Section 11 of the Act is not maintainable in view of the fact that when an Arbitrator is to be appointed under Section 11 of the Act, the Court has to see as to whether there exists a valid arbitration clause in the agreement or not. Since the aforesaid agreement which has been attached with the present petition vide Annexure P-1 although signed by both the parties was only a draft template, it was not binding upon the parties. Therefore, the clause of arbitration cannot be acted upon. In this regard, she referred to the opening pages of the aforesaid agreement vide Annexure P-1 in which it has been mentioned that it is a privileged and confidential draft for discussion purposes only, although last page of the agreement shows that it has been signed by both the parties on 17.04.2024. She submitted that considering the aforesaid facts and circumstances, the present petition may be dismissed.

5. Learned counsel for the respondent has relied upon the judgment passed by Hon'ble Supreme Court in "**PSA Mumbai International Private Limited Vs. Jawaharlal Nehru Port Trust**", (2018) **10 SCC 525** to contend that if the contract is not a valid one and not a concluded contract, then the Arbitrator cannot be appointed.

6. I have heard the learned counsels for the parties.

7. The petitioner has attached the aforesaid Unit Franchise Agreement dated 17.04.2024 vide Annexure P-1 and a perusal of the same would show that the same has been signed by both the parties although on the top of the agreement it has been mentioned that it is a privileged and confidential draft for discussion purposes only. Thereafter, as per Annexure P-5, the respondent issued a notice to the petitioner for termination of the aforesaid contract. Since a dispute arose between the parties, the petitioner



ARB-267-2025

-4-

has invoked the aforesaid arbitration clause by issuing a legal notice dated 05.09.2024 vide Annexure P-6 but the respondent refused to receive the same. In the second legal notice dated 18.03.2025 (Annexure P-10), the respondent gave a reply in which he stated that although the agreement is signed by both the parties but it is not a valid contract between both the parties and therefore, arbitration clause cannot be invoked.

8. The law pertaining to the aforesaid facts and circumstances has been settled by Hon'ble Supreme Court in "**SBI General Insurance Company Limited Vs. Krish Spinning**", 2024 SCC Online SC 1754 and also another judgment of Hon'ble Supreme Court in "**Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re**" (2024) 6 SCC 1 and therefore, the law is no longer *res integra*. The relevant portion of the aforesaid judgment of Hon'ble Supreme Court passed in **SBI General Insurance Company Limited's case (Supra)** is reproduced as under:-

"110. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

111. The use of the term 'examination' under Section 11(6-A) as distinguished from the use of the term 'rule' under Section 16 implies that the scope of enquiry under section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or



laborious enquiry, which is left for the arbitral tribunal to ‘rule’ under Section 16. The prima facie view on existence of the arbitration agreement taken by the referral court does not bind either the arbitral tribunal or the court enforcing the arbitral award.

112. The aforesaid approach serves a two-fold purpose – firstly, it allows the referral court to weed out nonexistent arbitration agreements, and secondly, it protects the jurisdictional competence of the arbitral tribunal to rule on the issue of existence of the arbitration agreement in depth.

113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re: Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:

“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an



unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators.[...]

(Emphasis supplied)

114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra).

115. The dispute pertaining to the “accord and satisfaction” of claims is not one which attacks or questions the existence of the arbitration agreement in any way. As held by us in the preceding parts of this judgment, the arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by



“accord and satisfaction”

116. The question of “accord and satisfaction”, being a mixed question of law and fact, comes within the exclusive jurisdiction of the arbitral tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the arbitral tribunal, should not be looked into by the referral court, even for a prima facie determination, before the arbitral tribunal first has had the opportunity of looking into it.”

9. The relevant paragraphs of the aforesaid judgment passed in ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re Case (Supra)*** are also reproduced as under:-

“120. In view of the above discussion, we formulate our conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the substantive independence of an arbitration agreement. Second, parties to an arbitration agreement mutually intend to confer jurisdiction on the arbitral tribunal to determine questions as to jurisdiction as well as substantive contractual disputes between them. The separability presumption gives effect to this by ensuring the validity of an arbitration agreement contained in an underlying contract, notwithstanding the invalidity, illegality, or termination of such



contract. Third, when the parties append their signatures to a contract containing an arbitration agreement, they are regarded in effect as independently appending their signatures to the arbitration agreement. The reason is that the parties intend to treat an arbitration agreement contained in an underlying contract as distinct from the other terms of the contract; and Fourth, the validity of an arbitration agreement, in the face of the invalidity of the underlying contract, allows the Arbitral Tribunal to assume jurisdiction and decide on its own jurisdiction by determining the existence and validity of the arbitration agreement. In the process, the separability presumption gives effect to the doctrine of competence-competence.

xx

xx

xx

165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from section 7 of the Arbitration Act. In Duro Felguera (supra), this Court held that the 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. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by arbitral tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia (supra) in the context of Section 8 and section 11 of the Arbitration Act.

166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, 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 minitrial 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. This position of law can also be gauged from the plain language of the statute.”



ARB-267-2025

-10-

10. Therefore, it is a settled proposition of law that at the time of reference under Section 11 of the Act, the Court is not to conduct mini trial. Although, it is correct that the Court is to see *prima facie* existence of the arbitration clause and also the agreement but with regard to the validity of the agreement, if any, which is so agitated, cannot be gone into by this Court under Section 11 of the Act. The agreement was signed by both the parties, however, it is the case of the learned counsel for the respondent that it was only a draft template. This issue can be dealt with only by learned Arbitrator at the time of arbitration proceeding and not by this Court under Section 11 of the Act. There is a *prima facie* existence of the arbitration clause i.e. Article 27(4). The invocation of the arbitration clause by issuing a notice to the respondent under Section 21 of the Act is also not in dispute.

11. So far as the aforesaid judgment passed by Hon'ble Supreme Court in **PSA Mumbai International Private Limited (supra)** which is so relied upon by learned counsel for the respondent is concerned, the same is not applicable and distinguishable in the present case because in that case there was no concluded contract.

12. In view of the aforesaid facts and circumstances, the present petition is allowed. Ms. Aakansha Sawhney, Advocate, resident of House No.# 1728, Sector 33-D, Chandigarh, Mobile No.9888177209, Email id. aakanksha.sawhney@gmail.com, is nominated as the Sole Arbitrator to adjudicate upon the dispute between the parties, subject to compliance of statutory provisions including Section 12 of the Act.

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

14. Fee shall be paid to the learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.
15. Learned Arbitrator is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Act.
16. A request letter alongwith a copy of the order be sent to Ms. Aakansha Sawhney, Advocate.

11.12.2025

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

1. Whether speaking/reasoned:

2. Whether reportable:

Yes/No

Yes/No