



ARB-271-2025

-1-

252

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

**ARB-271-2025
Date of Decision: 10.12.2025**

Hero Motocorp Limited

.... Petitioner

Versus

Vivek Sood and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Nikhil Goyal, Advocate (through V.C.) &
Mr. Rana Gurtej Singh, Advocate,
for the petitioner.

Ms. Jasmine Damkewala, Advocate (through V.C.)
Mr. Sanjeev K. Sharma, Advocate,
for the respondents.

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') read with Section 151 of the Code of Civil Procedure praying for appointment of a Sole Arbitrator to adjudicate upon the disputes which have arisen between the parties.

2. Mr. Nikhil Goyal, learned counsel for the petitioner who has caused appearance through video conferencing along with Mr. Rana Gurtej Singh, Advocate, who has appeared in physical hearing submitted that a lease deed dated 27.01.2021 was executed between the petitioner and the respondents vide Annexure P-1 in which there exists a valid arbitration clause i.e. Clause 6.4 which provides that any dispute, controversy, claim or breach arising out of or relating to this Agreement (including its interpretation, validity, or the parties' rights and obligations) shall first be



ARB-271-2025

-2-

settled amicably through mutual discussions or through mediation and conciliation, failing which, it shall be finally resolved by arbitration under the Act. It further provides that the parties shall mutually appoint a Sole Arbitrator within 15 days, failing which, either may approach the Court for such appointment. He further submitted that when the dispute arose between the parties, the petitioner had tried its level best to settle the matter amicably and also by mutual discussions but the same failed. Thereafter, the petitioner has invoked the aforesaid arbitration clause by issuing notice to the respondents under Section 21 of the Act vide Annexure P-5 dated 18.03.2025 to which the respondents have filed their response vide Annexure P-6 whereby they have rejected the request of the petitioner for appointment of a Sole Arbitrator. Therefore, the present petition has been filed under Section 11 of the Act for appointment of a Sole Arbitrator by this Court.

3. On the other hand, Ms. Jasmine Damkewala, learned counsel for the respondents has caused appearance through video conferencing along with Mr. Sanjeev K. Sharma, Advocate, who has appeared in physical hearing submitted that there is no dispute with regard to existence of the aforesaid arbitration clause and that the petitioner has invoked the aforesaid arbitration clause vide Annexure P-5 to which the respondents have filed their response vide Annexure P-6. However, she raised an objection that as per the aforesaid arbitration clause, before invoking the said clause, the first stage was to settle the dispute amicably through mutual discussions which was not done and therefore, the present petition is pre-mature and is liable to be dismissed. She also submitted that there is no arbitral subject matter in the present case which is yet another reason why the present petition is liable to be dismissed.



4. I have heard learned counsels for the parties.
5. The aforesaid arbitration clause i.e. Clause 6.4 is reproduced as under:-

“6.4 Any dispute, controversy, claims, breach arising out or touching upon to the relation of interpretation and validity of the terms thereof and the respective rights and obligations of the Parties to the agreement shall be settled amicably by mutual discussion or through mediation and conciliation, failing which the same shall be settled through Arbitration in accordance with the Arbitration and Conciliation Act, 1996 and Rules pursuant thereto, as amended from time to time. In case of arbitration, the parties will mutually agree on a Sole Arbitrator and upon failure to do so within a period of 15 days, they shall approach the Courts for appointment of a Sole Arbitrator. The arbitration proceedings will be carried out at Gurugram and shall be conducted in English only.”

6. The lease deed dated 27.01.2021 executed between the parties, existence of an arbitration clause and the invocation of the aforesaid arbitration clause by issuing a notice to the respondent under Section 21 of the Act are not in dispute. However, two objections have been raised by learned counsel for the respondents. Firstly, the petitioner was supposed to try and settle the matter amicably through mutual discussions which was not done in the present case and secondly, the dispute is not arbitrable.

7. So far as the first objection raised by learned counsel for the respondents is concerned, learned counsel for the petitioner has so argued while referring to Para No.18 of the aforesaid notice (Annexure P-5) vide which the arbitration clause was invoked in which the petitioner has specifically stated that the petitioner has tried to settle the matter before



ARB-271-2025

-4-

invoking the arbitration clause but it could not succeed. Be that as it may, it is a settled law that the reference Court at the time of considering a petition under Section 11 of the Act is to see *prima facie* existence of an arbitration clause which is not in dispute in the present case. Reference in this regard can be made to a judgment of Hon'ble Supreme Court passed in "**SBI General Insurance Company Limited Vs. Krish Spinning**", 2024 SCC Online SC 1754. Therefore, the aforesaid argument raised by learned counsel for the respondents is not sustainable.

8. So far as the second objection raised by learned counsel for the respondents that the subject matter is not arbitrable is concerned, the same is also unsustainable and liable to be rejected in view of the judgment of Hon'ble Supreme Court in ***SBI General Insurance Company Limited's case (Supra)*** since as to whether the matter is arbitrable or not can only be seen by the Arbitrator at the time of arbitration proceedings and not by this Court at the reference stage under Section 11 of the Act particularly when existence of a valid arbitration clause in the agreement and the serving of notice by invoking the said clause is not in dispute.

9. Consequently, the present petition is allowed. Ms. Jyoti Choudhary, Advocate, resident of House No.2058/3, Sector 45-C, Chandigarh, Mobile No.9041075460, Email id. jyotichoudharyadv@yahoo.co.in, is nominated as the Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions including Section 12 of the Act.

10. 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.

**ARB-271-2025****-5-**

11. Fee shall be paid to the learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.

12. Learned Arbitrator is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Arbitration Act.

13. A request letter alongwith a copy of the order be sent to Ms. Jyoti Choudhary, Advocate.

10.12.2025*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |