



201 (2 cases)

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

1.

ARB-543-2021 (O&M)

M/S SHIV DARSHAN (INDIA) CONSTRUCTIONS PVT. LTD

....Petitioner

Versus

PAN INDIA INFRA PROJECTS PVT. LTD

...Respondent

2.

ARB-554-2021 (O&M)

M/S SHIV DARSHAN (INDIA) CONSTRUCTIONS PVT. LTD

....Petitioner

Versus

PAN INDIA INFRA PROJECTS PVT. LTD

...Respondent

Date of decision: 21.11.2025

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

Present: Mr. P.S. Rana, Advocate
for the applicants.

None for the respondents.

SHEEL NAGU, C.J. (Oral)

1. This common order shall dispose of above stated two (02) applications as the issue involved in all these applications is similar. For the sake of brevity, facts are being derived from ARB-543-2021.

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



2. The respondents, despite being served, are not represented.
- 2.1 This matter is pending since last about four years, awaiting orders of this Court.
3. The Arbitration Clause 71.0 of the agreement dated 01.05.2011 (Annexure A-1) vouches for the existence of an arbitration clause in the agreement, and therefore this Court proceeds to decide these applications. The arbitration clause is as follows:

“71.0 ARBITRATION CLAUSE

Except as otherwise provided in this contract all question and dispute relating to the meaning of specification, designs, drawings and instruction here in before mentioned as to thing whatsoever in any way arising out of or relating to contract designs, drawings, specification, estimate, concerning the works, or execution or failure to execute the same, whether arising during the progress of work or a after the abandonment there of shall be referred to the GM for his decision, within a period of 30 (thirty) days of such an occurrence(s). There upon the GM shall give his written instructions and/or decisions ,after hearing the contractor and engineer-in-charge of PMC within a period of thirty days of such request. This period can be extended by mutual consent of parties.

Upon receipts of written instruction or decisions, of GM the parties shall promptly proceed without delay to comply such instructions or decisions. If the GM fails to give his instruction or decision in writing within a period of 30 days or mutually agreed time after being requested and/ or, if the parties is/ are aggrieved against the decision of the GM, The aggrieved party may within 30 days prefer an appeal to the Co-



ordination committee which consist of following members, who shall afford an opportunity to the parties being heard and to offer evidence in support of his appeal.

CO-ORDINATION COMMITTEE -

<i>(1) Chief Executive Officer of DVPL</i>	<i>Chairman</i>
<i>(2) Architect</i>	<i>Member</i>
<i>(4) GM/Manager (Finance) of DVPL</i>	<i>Member</i>

The Co-ordination committee will give his decision within 30 (Thirty) days or such mutually agreed period through CEO of DVPL.

If any party(es) is/ are aggrieved against the decision of Co-ordination committee not satisfied, He can file the petition for resolving the dispute through arbitration in the arbitration tribunal at Mumbai within 30 days from the date of issue of the decision by Co-ordination committee through CEO, of DVPL... ”

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

4. 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.”*



4.1 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?”

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. Taking a wholistic view of the ratio laid down by Apex Court in aforesaid cases, the pre-requisites for invoking power u/s 11 (6) of 1996 Act appear to be satisfied.

8. Accordingly, these applications are allowed.

8.1 Hon’ble Mr. Justice Gurdev Singh, former Judge of Punjab and Haryana High Court, residing at House No.113, Sector 10-A, Chandigarh, Mobile No.08556009312, 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/his convenience.

10. The Arbitrator is appointed with the liberty to determine 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 Hon’ble Mr. Justice Gurdev Singh, former Judge of Punjab and Haryana High Court.

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

(SHEEL NAGU)
CHIEF JUSTICE

21.11.2025

mohit goyal

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