

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

**ARB-356-2023 (O &M)
Date of decision : 19.12.2025**

M/s P.D. Agrawal Infrastructure Ltd.

.....Applicant(s)

Versus

State of Punjab and Others

....Respondent(s)

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

Present: Mr. Karan Singh, Advocate,
for Mr. Parveen K. Moudgil, Advocate,
for the applicant.

Mr. Kamalpreet Bawa, Deputy Advocate General, Punjab.

SHEEL NAGU, CHIEF JUSTICE (Oral)

1. Instant application u/s 11 (6) of Arbitration and Conciliation Act, 1996 (for short, '1996 Act'), seeks appointment of Arbitrator/Arbitrators.
2. Reply filed on behalf of respondent No. 4 is taken on record and perused.
3. The rival parties herein entered into agreement dated 07.04.2006 (Annexure P-3) containing an arbitration clause/article as follows :

"19.1 AMICABLE RESOLUTION

(A) Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement between the Concessionaire and the GOP and so notified in writing by either Party to the other, with a copy endorsed to the Steering Group and the IQCC, (the "Dispute"), shall, in the first instance, be attempted to be resolved amicably by a senior representative of GOP and the Concessionaire available at the Chandigarh and familiar with the Project within 30

(thirty) days of receiving such notice. In the event the Dispute is not so resolved, as evidenced by the signing of the written terms of settlement, within 30 (thirty) days of such notice, or such longer period as may be mutually agreed by the Concessionaire and the GOP in writing, then the provisions of sub-article (b) herein below shall apply.

(b) The GOP and the Concessionaire shall refer the Dispute to the Steering Group for amicable resolution, whereupon the Steering Group shall meet to discuss and resolve the Dispute no later than 7 (seven) working days of the date of such reference. In the event the Steering Group does not meet within 7 (seven) days of such reference or the Dispute is not resolved within 21 (twenty- one) working days of such meeting or such longer period as may be mutually agreed by the Parties, as evidenced by signing of written terms of settlement, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 19.2 hereof.

19.2 ARBITRATION

(a) The GOP and the Concessionaire shall submit the Dispute for arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted by an arbitral tribunal comprising three arbitrators, of which one shall be appointed by the Concessionaire and one jointly by GOP and PIDB, and the two such arbitrators shall appoint the third arbitrator who shall be the chairman of the arbitral tribunal.

(b) The arbitrators shall make a reasoned award, and any award made pursuant to this Article 19.2 shall be final and binding on the Parties as from the date on which it is made, and the Concessionaire, PIDB and GOP agree to implement and execute such award without delay.

(c) The arbitration proceedings shall be conducted in the English language and in Chandigarh or at such other place as may be agreed between the GOP and the Concessionaire.

(d) xxx xxx xxx
(e) xxx xxx xxx

3.1 Dispute erupted between the parties. The parties have exhausted the channel of conciliation, however, amicable settlement could not be arrived

at. The applicant served notice upon respondent seeking resolution of dispute through Arbitral Tribunal, but to no avail.

4. Learned Counsel for State of Punjab could not dispute, execution and existence 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** (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.”*

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?”*

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 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. A perusal of the arbitration agreement clearly stipulates that disputes between the parties were to be referred to a panel of three arbitrators, as per Article 19.2 of Concession Agreement (Annexure P-3). The record reflects that despite invocation of the arbitration clause vide notice dated June 28, 2023 (Annexure P-12), the respondents failed to nominate its Arbitrator, resulting into forfeiture of their right to nominate or appoint. Such inaction led to frustration of the contractual procedure, thereby necessitating judicial intervention u/s 11(6) of 1996 Act by applicant for appointment of nominee arbitrator on behalf of State of Punjab and PIDB (Punjab Infrastructure Development Board).

10. The claimant, in accordance with arbitration agreement, nominated Sh. B.D. Joshi , Retd. Engineer-in-Chief , HPPWD situated at F-312, Sarita Vihar, New Delhi-110076.

11. Accordingly, this application is allowed.

11.1 Mr. Justice R.K. Nehru, former Judge of Punjab and Haryana High Court and Jammu and Kashmir High Court, residing at #1704, Sector 4, Panchkula, Mobile No. 9888462108, is hereby appointed as Nominee Arbitrator on behalf of Respondents for adjudication of dispute between the parties, subject to compliance of statutory requirements under 1996 Act before proceeding ahead.

12. Parties are directed to appear before the Panel of Arbitrators on date, time and place to be fixed by the panel at their convenience.

13. The panel will be at liberty to determine jurisdiction, including ruling on any objections including objections with respect to the existence or validity of the arbitration agreement and the scope of the Arbitrators’ authority in accordance with Section 16 of the 1996 Act.
14. The Arbitrators 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.
15. The panel is requested to complete the arbitral proceedings as per time limit stipulated u/s 29-A of 1996 Act.
16. Any observation made hereinabove is meant merely for passing this order and shall not be construed as expression on merits of the dispute.
17. A request letter along with copy of this order be sent to Mr. Justice R.K. Nehru, former Judge of Punjab and Haryana High Court and Jammu and Kashmir High Court as well as to Sh. B.D. Joshi , Retd. Engineer-in-Chief , HPPWD.

(SHEEL NAGU)
CHIEF JUSTICE

December 19, 2025

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