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

ARB-445-2025

Date of decision: 26.11.2025

M/S KRISHNA PROCESSORS AND ANOTHER**...Petitioner(s)****VERSUS****PUNJAB DYERS ASSOCIATION AND OTHERS****...Respondent(s)****CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present:- Mr. Nikhil Sabharwal, Advocate for the petitioners.

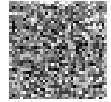
Mr. P. S. Ahluwalia, Senior Advocate with
Ms. Bhavi Kapur, Advocate and
Ms. Isha Mehta, Advocate for the respondents.

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') seeking appointment of an independent Arbitrator to adjudicate the disputes and differences which have arisen between the parties.

2. Learned counsel for the petitioners submitted that there exists an agreement between the parties pertaining to the Common Effluent Treatment Plant (CETP), which has been annexed along with the present petition as Annexure P-4. He further submitted that the aforesaid agreement also contains an arbitration clause i.e. Clause 12, which is reproduced as under:-

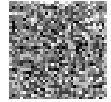
*“12. That in case of any dispute between the first part
and the second party, the party raising the dispute shall*



raise its dispute for settlement before a director of first party nominated by the First Party with in one month of the dispute arising. The dispute so referred shall be settled by said director of First Party within 30 days after hearing both parties. The party aggrieved by the decision of the said director of first party may Intimate, with in 30 days of the decision of said director of first party, its intention to settle dispute through arbitration. Both parties shall thereafter meet with in one week, at initiative of second party to appoint a mutually agreed arbitrator and refer the dispute to such arbitrator for arbitration as per Arbitration & Reconcillation Act 1996 as amended.”

3. Learned counsel for the petitioners further submitted that as per the aforesaid clause, any dispute arising between the parties is firstly required to be referred to the Director of the first party for settlement and if either party remains aggrieved after such decision, the matter is then to be referred to the Arbitrator for arbitration. He further submitted that although there was an arbitration clause but still the petitioners filed a civil suit against the respondents seeking a permanent injunction regarding the dispute which had arisen between the parties. However, upon filing of the suit by the petitioners, the respondents therein, who were the defendants in the suit, filed an application under Section 8 of the Act seeking dismissal of the suit on the ground of existence of the arbitration clause. He further submitted that thereafter, the aforesaid application filed by the respondents was allowed by the learned Civil Judge (Junior Division), Ludhiana on 06.08.2024, whereby the matter was referred to the Arbitrator as per the clause of the agreement. The relevant portion of the aforesaid order dated 06.08.2024 passed by the learned

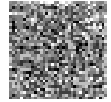
Civil Judge (Junior Division), Ludhiana, is reproduced as under:-



“..... Admittedly, in this case, agreement was executed and plaintiff is relying upon the same agreement at the time of filing the civil suit, which clearly shows that there is an arbitration clause in para no. 12 and now plaintiff cannot run from this arbitration clause. Accordingly, in view of above said discussion and law laid down by Hon'ble Supreme Court of India as well as Hon'ble Punjab & Haryana High Court, the present application of the applicant stands allowed and matter is hereby referred to the Arbitrator as per the clause of the Agreement alleged to be executed in between the parties. File be consigned to record room. However, any observation made in the present order will not effect the case of the parties, on merit.”

4. Mr. Sabharwal further submitted that the aforesaid order passed by the learned Civil Judge (Junior Division), Ludhiana, was assailed by the petitioners in a Civil Revision before this Court but the same was dismissed as withdrawn. He further submitted that thereafter, still the respondents did not appoint any Arbitrator and consequently, the petitioners served a notice invoking the arbitration clause vide Annexure P-28 dated 14.06.2025, but no action was taken by the respondents and therefore, the present petition has been filed seeking appointment of an independent Arbitrator.

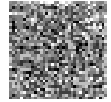
5. On the other hand, learned Senior Counsel appearing on behalf of the respondents submitted that there is no dispute with regard to the aforesaid factual position that upon a civil suit being filed by the petitioners against the respondents, the respondents filed an application under Section 8 of the Act seeking reference of the matter to the Arbitrator in view of the existence of the arbitration clause and the said application was allowed, which has now attained



finality. He further submitted that the petitioners did not, in the first instance, attempt to resolve the dispute through negotiations as required under the aforesaid arbitration clause. He also submitted that there is no dispute that the petitioners have now invoked the arbitration clause vide Annexure P-28 after the learned Civil Judge (Junior Division), Ludhiana, has referred the matter to the Arbitrator.

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

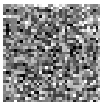
7. The existence of the agreement between the parties (Annexure P-4), the arbitration clause, the order dated 06.08.2024 passed by the learned Civil Judge (Junior Division), Ludhiana and the notice invoking the aforesaid arbitration clause vide Annexure P-28, are not in dispute. In this way, the prerequisites for the appointment of an Arbitrator under Section 11 of the Act are fulfilled. There is a *prima facie* existence of the arbitration clause. However, so far as the objection which has been raised by the learned counsel for the respondents that the petitioners should have first resorted to negotiation is concerned, the same would not be sustainable in the facts and circumstances of the present case particularly in view of the fact that it was on the application filed by the respondents themselves under Section 8 of the Act that the learned Civil Judge (Junior Division), Ludhiana vide aforesaid order dated 06.08.2024 allowed the application and referred the matter to the learned Arbitrator. It was thereafter, when the respondents failed to appoint an Arbitrator that the aforesaid notice (Annexure P-28) was served by the petitioners upon the respondents. Even otherwise also, while considering a petition under Section 11 of the Act, the reference Court is only to see *prima facie* existence of an



agreement and the arbitration clause, regarding which no dispute has been raised by any of the parties.

8. The law with regard to the aforesaid proposition is no longer *res integra*. Hon'ble Supreme Court in **SBI General Insurance Co. Ltd. versus Krish Spinning, 2024 SCC OnLine SC 1754** held that the scope of examination under Section 11(6-A) of the Act is confined to the existence of an arbitration agreement on the basis of Section 7 of the Act. The use of the term 'examination' under Section 11(6-A) as distinguished from the use of the term 'rule' under Section 16 of the Act 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. Delhi High Court in **Jhajharia Nirman Ltd. versus South Western Railways, 2024 SCC Online Del 7133** while dealing with the issue of pre-arbitral mechanism observed that any pre-condition in an arbitration agreement obliging one of the contracting parties to either exhaust the pre-arbitral amicable resolution avenues or to take recourse to Conciliation are directory and not mandatory. In this way, all the requisite conditions for invoking Section 11 of the Act for the appointment of a Sole Arbitrator are satisfied in the present case. In view of the above, this Court finds no impediment to appoint a Sole Arbitrator in view of *prima facie* existence of an arbitration agreement.

9. It is made clear that the objections of the respondents as regards arbitrability and jurisdiction are left open for consideration by the learned Sole



Arbitrator. It shall be open for the respondents to move an appropriate application under Section 16 of the Act, which shall be duly considered and decided by the learned Sole Arbitrator in accordance with law.

10. In view of the aforesaid facts and circumstances, the present petition is allowed. Hon’ble Mr. Justice Amol Rattan Singh, a former Judge of this Court, resident of House No.363 Sector-2, Panchkula-134109, Mobile No.9814105596, e-mail ID-amolrattansingh@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.

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

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

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

14. A request letter alongwith a copy of the order be sent to Hon’ble Mr. Justice Amol Rattan Singh, a former Judge of this Court.

(JASGURPREET SINGH PURI)
JUDGE

26.11.2025
Chetan Thakur

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