



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

ARB-579-2025

Date of decision : 28.10.2025

M/s Chandra Construction Company

.....Applicant

Versus

Municipal Corporation, Faridabad and others

....Respondents

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

Present: Mr. Gaurav Arora, Advocate,
for the applicant.

Mr. Ashok Kumar Khubbar, Advocate,
for the respondents.

SHEEL NAGU, CHIEF JUSTICE (Oral)

1. Instant application u/s 11 (6) of Arbitration and Conciliation Act, 1996 ('Act of 1996' for brevity), seeks appointment of Arbitrator.
2. The rival parties herein entered into agreement dated 02.07.2019 (Annexure P-1) containing arbitration clause as follows :

“25A :-

(i) xxx xxx xxx

(ii) *All disputes or differences in respect of which the decision is not final and conclusive shall at the request, in writing, of either party, made in a communication sent through Registered A.D. Post, be referred to the sole arbitration of any serving Superintending Engineer of Municipal Corporation, Faridabad to be nominated by designation by Chief Engineer of Municipal Corporation, Faridabad at the relevant time. There will be no objection to*



any such appointment that the arbitrator so appointed is a Govt. servant/in service of Municipal Corporation, Faridabad or that had to deal with the matter to which the contract relates in the course of his duties as a Govt. servant/in service of Municipal Corporation, Faridabad, he has expressed his views on all or any of the matter in dispute. The Arbitrator to whom the matter is originally referred being transferred or vacating his office, his successor-in-office, as such shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

Or

In case the arbitrator nominated by the Chief Engineer, Municipal Corporation, Faridabad is unable or unwilling to act as arbitrator for any reason, whatsoever, the Chief Engineer, Municipal Corporation, Faridabad shall be competent to appoint and nominate any other Superintending Engineer of Municipal Corporation, Faridabad, as arbitrator in his place and the arbitrator so appointed shall be entitled to proceed with the reference.”

2.1 Dispute erupted between the parties. The applicant served notice dated 28.03.2025 (Annexure P-4) followed by legal notice dated 19.06.2025 (Annexure P-5) upon the respondents seeking resolution of dispute, but to no avail.

3. Learned counsel for the respondents could not dispute execution 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.



3.1 Learned counsel for the respondent, however, submits that the arbitration clause contains a requirement as replicated below:

“vii. *It is also a term of this arbitration agreement that where the party invoking arbitrator is the contractor, no reference for arbitrator shall be maintainable unless the contractor, furnishes to the satisfaction of the Executive Engineer in charge of the work, a security deposit of a sum determined according to details given below and the sum so deposited shall, on the termination of the arbitration proceedings, be adjusted against the cost, if any, awarded by the arbitrator against the claimant party and the balance remaining after such adjustment or whole sum in absence of any such cost being awarded will be refunded to him within one month from the date of the award.*

	<i>Amount of claims</i>	<i>Rate of security deposit</i>
1.	<i>For claims below Rs. 10,000/-</i>	<i>2% of amount claimed.</i>
2.	<i>For claims of Rs. 10,000/-and above & below Rs. 1,00,000/-</i>	<i>5% of amount claimed</i>
3.	<i>For claims of Rs. 1,00,000/ and above</i>	<i>7½% of amount claimed,</i>

The Stamp-fee due on the award shall be payable by the party as desired by the arbitrator and in the event of such party's default the Stamp-fee shall be recoverable from any other sum due to such party under this to any other contract.”

3.2 Learned counsel for the respondent categorically brings an objection to this regard and submits that no such amount as required in the arbitration clause replicated above has been submitted and thus no reference for arbitrator shall be maintainable.



4. 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** (paragraphs 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 **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 xxx xxx xxx



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. Pre-requisites for invoking power u/s 11 (6) of 1996 Act appear to be satisfied.

8. Accordingly, this application is allowed.



8.1 Mr. Justice Pritam Pal, former Judge of this Court, residing at House No. 665, Sector 11-B, Chandigarh, Mobile No. 94631 22333, is hereby appointed as Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of all mandatory 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 his convenience.

10. The Arbitrator is appointed with liberty to determine jurisdiction, including ruling on any objections or questions with respect to the existence or validity of the arbitration agreement and scope of the Arbitrator’s authority in accordance with Section 16 of 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 Mr. Justice Pritam Pal, former Judge of this Court.

(SHEEL NAGU)
CHIEF JUSTICE

October 28, 2025
ndj

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