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

ARB-6-2025 (O&M)

Date of Decision:17.03.2026

**Deen Bandhu Chotu Ram Thermal Power Plant HPGCL Yamuna
Nagar**

.....Petitioner

Versus

M/S Green Vision Testing and Enviro Services

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Prateek Mahajan, Advocate for the petitioner.

Dr. Deepak Jindal, Advocate for the respondent.

JASGURPREET SINGH PURI J.(Oral)

1. The present is a petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeking appointment of a sole arbitrator in the present case.

2. Learned counsel for the petitioner submitted that vide Annexure A-2, the offer given by the respondent for the work was accepted by the petitioner on 25.01.2022, and on the basis of the aforesaid acceptance, an allotment letter/work order was issued to the respondent vide Annexure A-3 dated 07.02.2022. The said work order contains an arbitration clause at condition No.18, which provides that all matters, questions, disputes, differences and/or claims arising out of and/or concerning and/or in connection with and/or relating to this Contract whether or not the obligations of either or both parties under this contract

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be subsisting at the time of such dispute and whether or not this contract has been terminated or purported to be terminated or completed, shall be referred to a Sole Arbitrator to be nominated by the Managing Director, HPGCL and the award of the Arbitrator shall be final and binding on the parties to the contract. He further submitted that it is also provided in the aforesaid work order, at condition No.27, that all other terms and conditions of the NIT are applicable, and in the NIT itself, which has been attached as Annexure A-1, there is also a similar arbitration clause providing for reference to a Sole Arbitrator. He submitted that disputes arose between the parties and in this regard, the petitioner invoked the arbitration clause by issuing a notice dated 04.04.2024 (Annexure P-13) to the respondent, proposing three names out of which one was to be accepted for appointment as a sole arbitrator. However, the same was not accepted by the respondent. A reminder was also sent to the respondent vide Annexure A-14, but still no action was taken. Rather, the respondent denied the request on the ground that there is no arbitration agreement signed between the parties and, therefore, no arbitrator can be appointed.

3. He also submitted that the mere fact that there is no formal agreement signed between the parties would not constitute a ground to non-suit the petitioner. In this regard, he referred to Section 7 of the Act which defines the scope of arbitration agreement. As as per Section 7(3) of the Act an arbitration agreement shall be in writing and as per Section 7(4) of the Act, an arbitration agreement is in writing if it is contained in a document signed by the parties or an exchange of letters, telex, telegrams or other

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means of telecommunication (including communication through electronic means) which provide a record of the agreement or an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other. He submitted that therefore even if there was no particular agreement signed between the parties, the present case would fall within the ambit of sub-Section (4) of Section 7 of the Act, inasmuch as an offer was made by the respondent which was accepted by the petitioner, resulting in a concluded contract between the parties, and thereafter a work order was issued which contains an arbitration clause. Accordingly, the petitioner cannot be non-suited on the aforesaid ground and as such any Sole Arbitrator may be appointed by this Court to adjudicate the disputes between the parties.

4. On the other hand, learned counsel for the respondent submitted that so far as the aforesaid Annexure A-2 is concerned, the same is not in dispute, and as per the aforesaid annexure, an offer which was made by the respondent was accepted by the petitioner, and it was also provided therein that a detailed work order along with other conditions would be issued separately. Thereafter, it is also not in dispute that Annexure A-3 was issued by the petitioner to the respondent, which is in the nature of a work allotment letter/work order and it also contains an arbitration clause. He submitted that, however, in the aforesaid work order, it has been provided in condition No.1 of the terms and conditions that the contractor shall execute a contract agreement with HPGCL on a non-judicial stamp paper of appropriate value within 07 days of receipt of the



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work order, which was never executed by the petitioner and therefore, on this ground, the petitioner is not entitled to appointment of an arbitrator under Section 11 of the Act, as there was violation of the terms of the contract inasmuch as no contract agreement was executed between the parties, and consequently, the present petition is liable to be dismissed.

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

6. The relevant portion of Annexure A-2, which is the acceptance of the offer dated 25.01.2022, is reproduced as under:-

Sub:-Regular environmental monitoring of Ambient Air, Effluent water, Fly Ash, ESP Efficiency, STP Water, Drinking water of Plant Area & colony & stack emission at DCRTPP, HPGCL, Yamuna Nagar (LOI).

Ref:- Your offer against NIT No.152/DCRTPP/XEN/CMD-II Dated:31.08.2021 (E-Tender-2021_HBC_185346_1).

This office is pleased to inform you that your offer against NIT No.152/DCRTPP/XEN/CMD-II Dated:31.08.2021 (E-Tender-2021_HBC_185346_1) for the subject cited work has been accepted on your quoted rates and terms & conditions of NIT. The total cost of work shall be Rs.6,01,092.00/- including GST. You are requested to start the work w.e.f.01.02.2022. The detailed work order along with other terms & conditions shall be issued separately.

Kindly acknowledge the receipt of this letter.

7. Thereafter, on the basis of the aforesaid concluded contract

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between the parties, an allotment letter/work order was issued vide Annexure A-3, which contains the arbitration agreement as well as conditions No.1, 18 and 27. Condition No.1 of the said work order has been relied upon by learned counsel for the respondent. The aforesaid conditions No.1, 18 and 27 are reproduced as under:-

1) CONTRACT AGREEMENT

The contractor shall execute a contract agreement with HPGCL on a Non Judicial Stamp Paper of appropriate value within 07 days of work order.

18) ARBITRATION

All the matters, questions, disputes, differences and/or claims arising out of and/or concerning and/or in connection and/or relating to this Contract whether or not obligations of either or both parties under this contract be subsisting at the time of such dispute and whether or not this contract has been terminated or purported to be terminated or completed, shall be referred to the Sole Arbitrator to be nominated by Managing Director, HPGCL. The Award of the Arbitrator shall be final and binding on the parties to this contract.

27) *All other terms & conditions of NIT are applicable.”*

8. Annexure A-1 is the terms and conditions of the NIT, which

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also contains a similar arbitration clause at clause 19. So far as Annexures A-2 and A-3, which have been reproduced above, are concerned, their execution is not disputed by learned counsel for the respondent. However, the only objection raised by learned counsel for the respondent is that since the petitioner has committed a breach of condition No.1 and also there is no signed contract between the parties, the petition under Section 11 of the Act would not be maintainable. This Court is unable to accept the contention raised by learned counsel for the respondent in view of the provisions of Section 7 of the Act, which are reproduced as under:-

“7. Arbitration agreement.—(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication



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through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

9. By way of Annexure A-2, the offer of the respondent was accepted by the petitioner and therefore, it became a concluded contract on account of exchange of letters between the parties and consequent thereupon, Annexure A-3 was issued in the nature of a work order, which is also not disputed by the respondent. In the aforesaid work order, there exists an arbitration clause at condition No.18, which has been reproduced above. The mere fact that there was a breach of condition No.1 and that no further contract was signed may also become a subject matter of dispute, but the same can be adjudicated upon only during the arbitration proceedings before the Arbitrator.

10. The law with regard to the scope and nature of jurisdiction to be exercised by this Court under Section 11 of the Arbitration and Conciliation Act, 1996 is no longer *res integra*. The same has been authoritatively settled by the Hon’ble Supreme Court in “***SBI General Insurance Company Limited Vs. Krish Spinning***”, 2024 SCC OnLine SC



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1754 and also another judgment of Hon'ble Supreme Court in ***“Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re” (2024) 6 SCC 1*** and therefore, the issue stands conclusively settled. The relevant portion of the aforesaid judgment of Hon'ble Supreme Court passed in ***SBI General Insurance Company Limited's case (Supra)*** is reproduced as under:-

“110. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

111. The use of the term ‘examination’ under Section 11(6-A) as distinguished from the use of the term ‘rule’ under Section 16 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.

112. The aforesaid approach serves a two-fold purpose – firstly, it allows the referral court to weed out nonexistent

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arbitration agreements, and secondly, it protects the jurisdictional competence of the arbitral tribunal to rule on the issue of existence of the arbitration agreement in depth.

113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re: Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:

“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with



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the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]

(Emphasis supplied)

114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra).

115. The dispute pertaining to the “accord and satisfaction” of claims is not one which attacks or questions the existence of the arbitration agreement in any way. As held by us in the preceding parts of this judgment, the arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by “accord and satisfaction”

116. The question of “accord and satisfaction”, being a mixed

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question of law and fact, comes within the exclusive jurisdiction of the arbitral tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the arbitral tribunal, should not be looked into by the referral court, even for a prima facie determination, before the arbitral tribunal first has had the opportunity of looking into it.”

11. The relevant paragraphs of the aforesaid judgment passed in ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re Case (Supra)*** are also reproduced as under:-

“120. In view of the above discussion, we formulate our conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the substantive independence of an arbitration agreement. Second, parties to an arbitration agreement mutually intend to confer jurisdiction on the arbitral tribunal to determine questions as to jurisdiction as well as substantive contractual disputes between them. The separability presumption gives effect to this by ensuring the validity of an arbitration agreement contained in an underlying contract, notwithstanding the invalidity, illegality,

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or termination of such contract. Third, when the parties append their signatures to a contract containing an arbitration agreement, they are regarded in effect as independently appending their signatures to the arbitration agreement. The reason is that the parties intend to treat an arbitration agreement contained in an underlying contract as distinct from the other terms of the contract; and Fourth, the validity of an arbitration agreement, in the face of the invalidity of the underlying contract, allows the Arbitral Tribunal to assume jurisdiction and decide on its own jurisdiction by determining the existence and validity of the arbitration agreement. In the process, the separability presumption gives effect to the doctrine of competence-competence.

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165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from section 7 of the Arbitration Act. In Duro Felguera (supra), this Court held that the referral courts only need to consider one aspect to

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determine the existence of an arbitration agreement - whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by arbitral tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia (supra) in the context of Section 8 and section 11 of the Arbitration Act.

166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the referral court. The referral court is not the appropriate forum to conduct a minitrial by allowing the parties to adduce the evidence in regard to the existence or



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validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the arbitral tribunal. This position of law can also be gauged from the plain language of the statute.”

12. In view of the aforesaid settled position of law, it is now well settled that while making a reference under Section 11 of the Act, the Court is required to examine only the prima facie existence of an arbitration clause and the invocation thereof—nothing more and nothing less. In case the respondent alleges breach of any condition of the contract or the allotment letter, the same is a matter to be adjudicated before the learned Arbitrator and is not within the scope of this Court.

13. In view of the aforesaid facts and circumstances, this Court is of the considered view that the conditions for appointment of an arbitrator under Section 11 of the Act at the reference stage stand satisfied.

14. Consequently, the present petition is allowed. Mr. Naresh Kumar, learned District and Sessions Judge, (Retired), resident of Village Manshapur, P.O. Harnoul, Tehsil Jagadhri, Yamunanagar, Mobile No. 8930712333, E-mail: Nareshkumar19121965 @gmail.com 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.

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



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- convenience.
16. Fee shall be paid to learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.
17. Learned Arbitrator is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Act.
18. A request letter alongwith a copy of the order be sent to Mr. Naresh Kumar, learned District and Sessions Judge, (Retired).

17.03.2026
shweta

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No