

ARB-45-2026 (O&M)

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

**ARB-45-2026 (O&M)
Date of Decision: 10.03.2026**

M/s Karan Engineers

.... Applicant

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Pawandeep Singh, Advocate for
Mr. Anand Vardhan Khanna, Advocate,
for the applicant.

Mr. Brijeshwar Singh Kanwar, Senior Panel Counsel,
for the respondents-UOI.

JASGURPREET SINGH PURI, J. (ORAL)**CM-3207-CII-2026**

For the reasons mentioned in the application, the same is allowed and written statement filed on behalf of the respondents is taken on record, subject to all just exceptions.

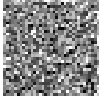
CM-3208-CII-2026

For the reasons mentioned in the application, the same is allowed and the documents as Annexures R-1 to R-13 are taken on record, subject to all just exceptions.

Main Case:

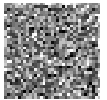
1. The present application has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') praying for appointment of an independent Sole Arbitrator to adjudicate upon the disputes and differences which have arisen between the parties.

2. Learned counsel for the applicant submitted that there was a

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Contract executed between the applicant and the respondents vide Annexure P-1, which contains a valid arbitration clause and the same is reflected at Page No.36 of the paperbook. The aforesaid clause stipulates that it was agreed between the parties that the general conditions of contract including condition No.70 pertaining to the settlement of disputes by Arbitration, form part of this agreement. He referred to the aforesaid general condition of the contract annexed at Page No.131 of the paperbook wherein Condition 70 provides that all the disputes and differences between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract, be referred to the Sole Arbitrator. He further submitted that a dispute arose between the parties and initially the applicant had filed a writ petition bearing No.CWP-21657-2025 before this Court which was dismissed as withdrawn since the petitioner had so submitted that he is entitled to interest on the delayed refund as well as damages and he intends to invoke the arbitration clause for the said purpose and it was in view of the aforesaid that the permission was granted to the petitioner to withdraw the petition with liberty as aforesaid. He submitted that the dispute still exists between the parties and hence, a notice under Section 21 of the Act was issued to the respondents for invoking the aforesaid arbitration clause vide Annexure P-31 on 05.12.2025. However, no response was received from the respondent in this regard. In view of the same, he prays that any independent Sole Arbitrator may be appointed by this Court.

3. On the other hand, learned counsel for the respondents-UOI has submitted that there is no dispute with regard to existence of the aforesaid



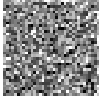
clause in the Contract (Annexure P-1) and the invocation of the said clause by issuing a notice to the respondents under Section 21 of the Act vide Annexure P-31. He however submitted that the respondents have two-fold objections. Firstly, the applicant had filed a writ petition which he had withdrawn and hence, he cannot file an application under Section 11 of the Act. Secondly, the claim sought to be referred by the applicant is a stale claim and barred by limitation and therefore, this Court cannot appoint an Arbitrator.

4. I have heard learned counsels for the parties.

5. The existence of an agreement between the parties containing an arbitration clause is not disputed by learned counsel for the respondents. The invocation thereof by the applicant by issuing notice under Section 21 of the Act to the respondents is also not in dispute. However, the aforesaid two-fold objections which the learned counsel for the respondents have raised, are required to be considered by this Court. First objection which was taken by learned counsel for the respondents was that earlier a writ petition was filed by the applicant before this Court which was dismissed as withdrawn vide Annexure P-30 dated 13.10.2025. The aforesaid order is reproduced as under:-

“1. At the outset, counsel for the petitioner submits that during the pendency of the instant petition, payment has been released. He however, submits that petitioner is entitled to interest on the delayed refund as well as damages and he intends to invoke the arbitration clause for the said purpose.

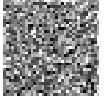
2. In view of the above development, he seeks and is granted permission to withdraw the writ petition with liberty as aforesaid.



3. *Dismissed as withdrawn with liberty as aforesaid.*”

6. A perusal of the aforesaid would show that the petitioner had withdrawn the aforesaid writ petition bearing CWP-21657-2025 in order to invoke the arbitration clause and a Co-ordinate Bench of this Court had granted permission to withdraw the said writ petition with liberty aforesaid. Therefore, this Court is of the considered view that the aforesaid order cannot become a bar for appointment of an Arbitrator under Section 11 of the Act especially when all the conditions *sine qua non* for the purpose of appointment of an Arbitrator by reference Court stand fulfilled. Hence, the aforesaid objection raised by learned counsel for the respondents is not sustainable in law.

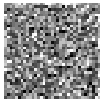
7. So far as the second objection raised by learned counsel for the respondents regarding the claim being stale and time-barred is concerned, the same is also not sustainable in view of the settled law that such plea cannot be taken before a reference Court which is considering an application under Section 11 of the Act. It is a settled law that at the stage of reference under Section 11 of the Act, the Court is only to see *prima facie* existence of an arbitration clause in the agreement and its invocation under Section 21 of the Act. A plea of time-barred claim cannot be entertained at the time of reference stage. In this regard, a reference can be made to the judgments passed by 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 in “*SBI General Insurance Company Limited Vs. Krish Spinning*”, 2024 SCC Online SC 1754 wherein it was so 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 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 and 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.

8. A Seven Judge Constitution Bench of Hon’ble Supreme Court in ***Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, in Re: case (Supra)*** had observed that at the stage of reference under Section 11 of the Act, the Court has only to see *prima facie* existence of an arbitration clause and its invocation thereof. The relevant portion of the said judgment is reproduced as under:-

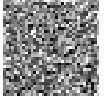
“120. In view of the above discussion, we formulate our conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the substantive independence 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, 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 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



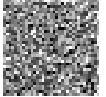
the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by arbitral tribunal under Section 16. We accordingly clarify the 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 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.”

9. The relevant portion of the judgment passed by Hon’ble Supreme Court in ***SBI General Insurance Company Limited’s case (Supra)*** is also 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

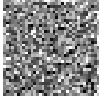


11(6-A) as distinguished from the use of the term ‘rule’ under Section 16 implies that the scope of enquiry under section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the arbitral tribunal 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 non-existent 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



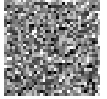
timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators.[...]

(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 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



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of looking into it.”

10. In this way, the second objection taken by leaned counsel for the respondents is also unsustainable in law being contrary to the settled law.

11. In view of the aforesaid facts and circumstances, the present application is allowed. Mr. Chanchal K. Singla, Senior Advocate, resident of (1) House No.544, Sector 109, Mohali Hills, SAS Nagar, Punjab (2) SCO 40-41, Level III, Sector-17 A, Chandigarh, Mobile No.9888345677, Email ID: chanchalksingla@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.

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

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

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

15. A request letter alongwith a copy of the order be sent to Mr. Chanchal K. Singla, Senior Advocate.

10.03.2026

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |