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

**ARB-59-2025 (O&M)
Date of Decision: 24.02.2026**

Civic Ventures Private Limited

.... Applicant

Versus

Sunil Kumar Rishi and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Parmanand Yadav, Advocate (through V.C.) &
Mr. Ambanshu Sahni, Advocate,
for the applicant.

Mr. Shahzeb Ahmed, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present application has been filed under Section 11 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. Mr. Parmanand Yadav, learned counsel for the applicant has caused appearance through video conferencing with Mr. Ambanshu Sahni, Advocate, who is present in Court, submitted that there was an agreement (Annexure P-2) executed between the applicant and the respondents which was in the nature of a collaboration agreement. In the aforesaid agreement, there exists a valid arbitration clause i.e. Clause 20 which provided that in case any dispute arises between the parties relating to this agreement, then the same will be firstly settled mutually by the parties and in case the same is not settled with mutual consent of the parties, in that event the matter will

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be referred to arbitration as per the provisions of the Act. He further submitted that when a dispute arose between the parties and the same was not settled mutually, the applicant invoked the aforesaid arbitration clause by issuing notice under Section 21 of the Act to the respondents, which was sent by way of speed-post/email on 02.12.2024 (Annexure P-3).

3. Learned counsel further submitted that the respondents have however taken an objection with regard to the aforesaid agreement that an Arbitrator cannot be appointed in view of the fact that the date of the collaboration agreement is 21.07.2021, which is so reflected on the first page of Annexure P-2 whereas the petitioner-Company, which is a private limited company, was incorporated under the Companies Act vide Annexure R-1 on 11.08.2021, which is after the aforesaid date and this objection raised by the respondents is neither maintainable nor sustainable.

4. While elaborating his arguments on the aforesaid issue, learned counsel for the applicant submitted that he has brought the original agreement before this Court and Annexure P-2 is an exact photocopy of the said original agreement. He while referring to the said original agreement submitted that a perusal of the first page of the aforesaid collaboration agreement (Annexure P-2) would show that it was drawn up on 21.07.2021 and the petitioner-Company was incorporated on 11.08.2021 vide Annexure R-1 and thereafter, the stamp paper were purchased on 20.08.2021, which is evident from the first page of the agreement. Furthermore, the parties signed the collaboration agreement on 15.11.2021 which is apparent from the last page thereof. He also submitted that in this way, even if the agreement was drawn up and was got typed prior to the incorporation of the Company, it would make no difference as the same was duly executed by the parties



through their signatures on 15.11.2021, which is a date subsequent to the date of incorporation of the petitioner-Company i.e. 11.08.2021. Therefore, the aforesaid objections raised by the respondents are not sustainable and hence, any independent Sole Arbitrator may be appointed by this Court since all the essential conditions under Section 11 of the Act stand fulfilled.

5. On the other hand, Mr. Shahzeb Ahmed, learned counsel for the respondents has submitted that once the Agreement (Annexure P-2) itself states on its first page that it was executed on 21.07.2021 when the petitioner-Company was not even in existence because the petitioner-Company was incorporated on 11.08.2021, then it would mean that the agreement itself is not in existence and since the agreement itself is not in existence, the arbitration clause cannot be given effect to by this Court in exercise of powers under Section 11 of the Act.

6. To substantiate his arguments, learned counsel has referred to Para No.2(f)(iii) of the application wherein it is averred that the petitioner and respondents entered into a binding collaboration agreement on 21.07.2021. By virtue of this admission in the pleadings itself, it is evident that the Agreement was not in existence on that date. Consequently, in the absence of the agreement, the arbitration clause contained therein is non-existent. Therefore, this Court cannot appoint any arbitrator under the said clause. He further submitted that since the petitioner-Company was incorporated only on 11.08.2021, no agreement or arbitration clause dated 21.07.2021, which was prior to the aforesaid date, can be given effect to.

7. Learned counsel for the respondents has also raised an objection that even assuming the contention of the learned counsel for the applicant regarding the date of execution of the aforesaid collaboration agreement to



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be correct, the invocation of the arbitration clause by the applicant through a notice issued under Section 21 of the Act (Annexure P-3), is defective, inasmuch as it erroneously refers to an agreement dated 21.07.2021.

8. I have heard learned counsels for the parties and have also perused the original agreement (Annexure P-2) which has been produced before the Court today by learned counsel for the petitioner.

9. Although a perusal of the aforesaid Annexure P-2 especially first page thereof would show that the collaboration agreement was executed at Gurugram on 21.07.2021 between the present parties whereas as per Annexure R-1, the petitioner-Company was incorporated on 11.08.2021 regarding which there is no dispute and stamp papers were purchased on 20.08.2021 but a perusal of the last page of the collaboration agreement (Annexure P-2) on which signatures are appended would show that the same were put on 15.11.2021, which is subsequent to the date of incorporation of the petitioner-Company i.e. 11.08.2021.

10. The law with regard to the scope and extent of examination by the referral Court at the stage of Section 11 of the Act is no longer *res integra*. 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 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. 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 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 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, 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.”

12. It is therefore clear that the High Court while exercising the powers under Section 11 of the Act is not to hold a mini-trial with regard to the aforesaid facts which have been disputed by the learned counsels for the parties. At the time of reference stage under Section 11 of the Act, the High Court only has to see *prima facie* existence of an arbitration clause and invocation thereof under Section 21 of the Act. The arbitration clause itself is not in dispute. However, the dates have been disputed by learned counsel for the respondents.



13. Similarly, during the course of arguments, learned counsel for the respondent has also raised objections that invocation under Section 21 of the Act vide Annexure P-3 was also defective because it was referring to an agreement of the date of 21.07.2021. This argument of the learned counsel for the respondents is also misconceived in view of the fact that as per Para 6 of the aforesaid notice (Annexure P-3), the reference has been made to the specific clause of the arbitration agreement and even the name of the Arbitrator has also been proposed in the said notice and the heading of the aforesaid notice would show that it is a notice under Section 21 of the Act for invoking the aforesaid arbitration clause. Therefore, the aforesaid objection raised by learned counsel for the respondents is also not sustainable.

14. In the present case, both the ingredients i.e. *prima facie* existence of the arbitration clause in the agreement (Annexure P-2) and invocation thereof remain satisfied.

15. In view of the aforesaid facts and circumstances, the present application is allowed. Mr. Justice Talwant Singh, a former Judge of Delhi High Court, resident of X-19, GF, Hauz Khas, Near NIFT Campus, New Delhi-110016, Office Address-Kothi No.199, Sector 11-A, Chandigarh-160011, Mobile No.9910384653, Email ID: mail@talwantsingh.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.

16. The respondents shall be at liberty to raise all the pleas legally permissible under the law before the learned Arbitrator at an appropriate stage.

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17. 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.

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

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

20. A request letter alongwith a copy of the order be sent to Mr. Justice Talwant Singh, a former Judge of Delhi High Court.

21. The original Agreement which was produced before the Court by learned counsel for the petitioner is returned back to him.

22. Miscellaneous applications, if any, shall also stand disposed of since the main case has been allowed.

24.02.2026*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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