



216(1)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ARB-54-2026 (O&M)
Date of Decision: 08.05.2026

M/S GURINDER SINGH CONTRACTOR

....Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Manmeet Singh Bindra, Advocate,
for the petitioner.

Ms. Shruti, Assistant Advocate General, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 11 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 appearing on behalf of the petitioner submitted that there is an agreement between the petitioner and the respondents in the nature of a construction contract which contains a dispute resolution mechanism in Clause No.25 and as per Clause 25(v), it is provided that all the disputes or differences in respect of which the decision is not final and conclusive shall at the request of either party made in communication sent through registered A.D. post be referred for arbitration to a Sole Arbitrator.



He submitted despite efforts having been made between the parties for settlement, the same have not been fruitful and the petitioner had issued a notice vide Annexure A-16 dated 17.02.2024 for invoking the aforesaid arbitration clause and a reply was received from the respondents vide Annexure A-17 dated 21.02.2024, wherein it was so stated that since the petitioner did not submit claim within six months, which was a condition for claiming and the claim is time barred, no such Arbitrator can be appointed.

3. Learned counsel submitted that the law in this regard is well settled that the aforesaid reason with regard to a time barred claim cannot become a ground for rejection of a petition under Section 11 of the Act because at the stage of reference under Section 11 of the Act, the Court only has to see the existence of the arbitration clause and invocation thereof and in the present case, both the aforesaid two conditions are in existence. The mere fact that the claim is belated would not become a ground for non-suiting the petitioner on the aforesaid reason for seeking reference for appointment of an Arbitrator in terms of the aforesaid agreement and the arbitration clause.

4. On the other hand, Ms. Shruti, Assistant Advocate General, Punjab submitted on instructions from Mr. Amit Sabharwal, Executive Engineer that there is no dispute with regard to existence of the agreement between the parties, which is in the nature of a construction contract, as well as the arbitration clause and it is also not disputed that the petitioner invoked the arbitration clause by issuing a notice vide Annexure A-16, to which the respondents have filed reply vide Annexure A-17. She submitted that however the objection of the respondent-State is that the claim which the petitioner wants to get settled through arbitration process is time barred



claim and therefore, no Arbitrator can be appointed in this regard. She also submitted that in case any Arbitrator is appointed by this Court, then liberty may be granted to the respondents to take all the legally permissible pleas available to them including the objection of time barred claim in accordance with law before the learned Arbitrator at an appropriate stage.

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

6. The arbitration clause contained in the aforesaid agreement as well as the notice invoking the arbitration clause is not in dispute in the present case and rather admitted by the learned State counsel. However, to the objection which was raised by the learned State counsel that the claim made by the petitioner is time barred, this Court is of the considered view that the same objection cannot be sustained in view of the settled law.

7. It is a settled law that at the time of reference stage under Section 11 of the Act, the reference Court is only to see the existence of two ingredients, firstly, *prima facie* existence of the arbitration clause and secondly, invocation thereof. Both the aforesaid essential conditions are satisfied in the present case and rather admitted by the learned State counsel.

8. The law regarding the scope of Section 11 of the Act at the reference stage is no longer *res integra*. It was laid down by Hon'ble Supreme Court in **SBI General Insurance Co. Ltd. versus Krish Spinning, 2024 SCC OnLine SC 1754** and also in **Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re, (2024) 6 SCC 1** that at the time of reference stage under Section 11 of the Act, the Court would not conduct a mini-trial and it would only see the *prima facie* existence of an arbitration clause and the invocation thereof. The detailed examination of evidence as to whether the dispute is



arbitrable or not, for any reason, is not to be gone into by the Court at the reference stage under Section 11 of the Act. It is only the *prima facie* existence of an arbitration clause and its invocation, nothing more, nothing less. The relevant portion of the aforesaid judgment of Hon'ble Supreme Court 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 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.”

9. Apart from the above, the relevant portion of the aforesaid judgment of Hon'ble Supreme Court in **Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re Case (Supra)** is 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.

xxx-xxx-xxx-xxx

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 mini trial 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.”

10. In view of aforesaid facts and circumstances, this Court is of the considered view that both the essential conditions for appointment of an Arbitrator stand satisfied.

11. Consequently, the present petition is allowed. Hon’ble Mrs. Justice Meenakshi I. Mehta, a former Judge of this Court, resident of House No. 358, Sector-2, MDC, Panchkula, Mobile No.9416877277, E-mail ID: mimehta1964@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. Needles to say, liberty is granted to the respondents to take all the legally permissible pleas available to them in accordance with law before the learned Arbitrator at an appropriate stage.

13. 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.

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

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

16. A request letter alongwith a copy of the order be sent to Hon’ble Mrs. Justice Meenakshi I. Mehta, a former Judge of this Court.

08.05.2026

(JASGURPREET SINGH PURI)

rakesh

JUDGE

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