

2026.PHHC.036439-DB



ARB-58 of 2026

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

ARB-58 of 2026

Date of decision: 06.03.2026

M/s A.K Builders**....Petitioner****Versus****Greater Mohali Area Development Authority (GMADA)****....Respondent****CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE**

Present: Mr. Aman Kashyap, Advocate(Arguing Counsel)
 Mr. Aarush Kashyap, Advocate
 for the applicant(s).
 Ms. Karina Kalra, Advocate for Mrs. Avin Sandhu, Advocate
 for respondent(s).

SHEEL NAGU, CHIEF JUSTICE (Oral)

1. Instant petition u/s 11 (6) of Arbitration and Conciliation Act, 1996 (for short, '1996 Act'), seeks appointment of Arbitrator.
2. Reply by way of Affidavit dated 06.03.2026 filed on behalf of the respondent is taken on record and perused.
3. The rival parties herein entered into agreement containing an arbitration clause as follows:

"25. DISPUTES RESOLUTION MECHANISM

- (i) *If any dispute or differences of any kind what-so-ever arise between the Authority, its authorized representatives and the contractor in connection with or arising out of this contract or the execution of work, these shall be resolved as under.*
- (ii) *Whether before its commencement or during the progress of Project/Work or after the termination, abandonment or breach of the contract, the dispute shall, in the first instance, be referred for settlement to the Engineer of the work and he shall, within a period of sixty days after being requested in writing by the contractor to do so, convey his decision to the contractor. Such decision in respect of every matter so*



referred shall, subject to arbitration as hereinafter provided, be final and binding upon the Contractor. In case of the work is already in process, the contractor shall proceed with the execution of the work on receipt of the decision of the Engineer as aforesaid with all due diligence, whether any of the parties requires arbitration as hereinafter provided or not.

- (iii) If the Engineer has conveyed his decision to the contractor and no claim for arbitration has been filed by the contractor within a period of sixty days from the receipt of the latter communicating the decision, the said decision shall be final and binding upon the contractor and will not be a subject matter of arbitration at all.*
- (iv) If the Engineer fails to convey his decision within a period of sixty days from the date on which the said request was made by the contractor, he may refer the dispute for arbitration as hereinafter provided.*
- (v) All 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 to the sole arbitration of a Superintending Engineer of Greater Mohali Area Development Authority acting as such at the time of reference unless debarred from acting as an Arbitrator by an order of the Authority, in which event, the Employer shall appoint any other technical officer of the department to act as an arbitrator on receipt of a request from either party.*

XXX XXX XXX XXX XXX XXX

3.1 Dispute erupted between the parties. The applicant in terms of Clause 25, submitted its disputes to the respondent vide letter dated 02.08.2024 (Annexure A-2), which were subsequently rejected by the Divisional Engineer vide Office Memo dated 29.08.2024 (Annexure A-3). Thereafter the petitioner requested for appointment of an Arbitrator vide letter dated 05.09.2024



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(Annexure A-4) and a reminder vide letter dated 19.11.2024 (Annexure A-5) upon respondent seeking resolution of the dispute. The applicant further sent a communication letter dated 08.03.2025 (Annexure A-6) proposing a panel of three independent arbitrators from the list empanelled with this Court for the appointment of a sole arbitrator.

3.2 However, the respondent referred only one dispute pertaining to the reimbursement of difference of increased amount of GST to Sole Arbitrator namely Sh. Deva Pampapathi Reddy IAS (Retd.) vide order dated 03.04.2025 (Annexure A-9).

3.3 It has been informed by the learned Counsel of the petitioner that the award pertaining to the same has been passed by the concerned Arbitrator. However, the rest of the disputes have not been referred for arbitration to the said Arbitrator.

3.4 A plain reading of Clause 25(v) as reproduced hereinabove, wherein the disputes were to be referred to the Superintending Engineer of the Greater Mohali Area Development Authority, makes it evident that the said provision is in direct contravention of Section 12(5) read with the Seventh Schedule of the Arbitration and Conciliation Act, 1996, and consequently, in light of the settled legal position, an independent and impartial Arbitrator is required to be appointed.

4. Learned counsel for respondent on instructions and on the basis of a short reply by way of affidavit dated 06.03.2026 filed on behalf of respondent, submits that the Respondent has no objection on appointment of an independent Arbitrator for resolution of dispute. The respondent further does not dispute execution of the arbitration agreement, exhaustion of remedy by applicant under the arbitration clause contained in the agreement between rival parties, service of



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notice, dispute between the parties being arbitrable, and the cause not being a deadwood.

5. 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** (para 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, 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 -----



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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?"*

6. In **NTPC Ltd. Vs. SPML Infra Ltd. (2023) 9 SCC 385**, 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."

7. 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."

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

9. Accordingly, this application is allowed..

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9.1 Mr. Justice Viney Mittal, former Judge of this Court, residing at House No. 115, Sector 16-A, Chandigarh, Mobile No. 9988100579 is hereby appointed as Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements under 1996 Act before proceeding ahead.

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

11. The Arbitrator is appointed with the liberty to determine jurisdiction and rule on any objections including (but not limited to) ruling on objections with respect to the existence or validity of the arbitration agreement and the scope of the Arbitrator's authority in accordance with Section 16 of the 1996 Act.

12. 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.

13. The Arbitrator is requested to complete the arbitral proceedings as per time limit stipulated u/s 29-A of 1996 Act.

14. Any observation made hereinabove is meant merely for passing this order and shall not be construed as expression on merits of the dispute.

15. A request letter along with copy of this order be sent to Mr. Justice Viney Mittal, former Judge of this Court.

(SHEEL NAGU)
CHIEF JUSTICE

06.03.2026

Kamal Gandhi

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