



ARB-253-2022

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

ARB-253-2022

Date of decision : 27.03.2026

M/s R.R.K.K. Infrastructure

.....Applicant

Versus

Punjab State Bus Stand Management Co. Ltd. and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE

Present: Mr. Sunil Kumar Garg, Advocate,
for the applicant.

Ms. Samdisha Kaur, AAG, Punjab.

SHEEL NAGU, CHIEF JUSTICE

1. Instant application u/s 11 (6) of Arbitration and Conciliation Act, 1996 ('1996 Act' for brevity), seeks appointment of Arbitrator.
2. Short reply by way of affidavit dated 24.03.2026 filed on behalf of the respondents is taken on record and perused.
3. The rival parties herein entered into agreement dated 25.04.2018 (Annexure P-1), containing an arbitration clause as follows :

“20.. *Dispute Resolution*

20.1 *Dispute Resolution*

Any dispute, difference or controversy of whatever nature regarding the validity, interpretation, implementation or the rights and obligations arising out of, or in relation to, or howsoever arising under or in relation to this Contract between the parties, and so notified by either party to the other party (the



“Dispute”) shall be subject to the dispute resolution procedure set out hereinafter.

20.2 *Direct discussion between parties*

The parties agree that any dispute that may arise between them shall be first submitted for direct discussion between the parties. For this purpose, the notice of dispute (the “Notice of Dispute”) sent by one party to the other party under Clause 20.1 shall be considered an invitation for direct discussion, and it should specify a reasonable time and venue for conduct of the negotiation proceedings. In addition, the Notice of Dispute shall specify the basis of the dispute and the amount claimed. In the direct discussion proceedings, each party shall be represented by officials or employer with sufficient knowledge and authority over the subject matter of the dispute in order for the discussion to be meaningful. At the discussion proceedings, the party that has given the Notice of Dispute shall present an offer of a settlement, which may form the starting point of discussions between the two parties during the discussion proceedings.

20.3 *Arbitration or Adjudication*

- a. In the event that the parties are unable to resolve the dispute through direct discussion under Clause 20.2, the parties shall submit the dispute for adjudication to the Chairman, PUNBUS. However, in the event that the dispute is not resolved the parties shall submit the dispute for arbitration in accordance with the Arbitration and Conciliation Act, 1996 (with upto date Amendments). There shall be a Board of 3 (three) arbitrators of whom each party shall*



select 1 (one) and the third shall be appointed by the two arbitrators appointed by the parties.

- c. The arbitrators shall make a reasoned award, and any award made pursuant to this Clause 20.3 shall be final and binding on the parties as from the date on which it is made, and the Operator and the Owner agree to undertake to carry out such award without delay.*
- d. The arbitration proceedings shall be conducted in the English language and in Chandigarh or such other place as may be agreed between the parties.*
- e. The cost incurred on the process of arbitration including inter alia the fees of the arbitral tribunal and the cost of the proceedings shall be borne by the parties in equal proportions. Each party shall bear its own legal fees incurred as a result of any dispute under this Clause 20.*

20.4 Performance during Dispute

Performance of this Management Contract shall continue during the settlement of any dispute under this Clause 20. The provisions for dispute settlement shall be binding upon the successors, assigns and any trustee or receiver of either the Owner or the Operator.”

3.1 Dispute erupted between the parties. The applicant served ‘notice of dispute’ dated 14.03.2022 (Annexure P-29) upon the respondents as per Clause 20.2 of Management Contract and Section 21 of 1996 Act for resolution of dispute, but to no avail, despite the instructions of this Court vide order dated 26.03.2021 passed in CWP-7192-2021. Thereafter, the applicant served a fresh notice dated 29.03.2022 (Annexure P-30) upon the respondents



for invoking the arbitration clause as per Clause 20.3 of the Management Contract and Section 21 of 1996 Act for appointment of Arbitrator, but no response has been received.

4. According to Clause 20.3, there shall be Board of three Arbitrators, of whom each party shall select one, and third shall be appointed by the two Arbitrators appointed by the parties. However, both the parties, during the proceedings, agreed for appointment of Sole Arbitrator and exhaustion of remedy by applicant under the arbitration clause in the agreement between rival parties, service of notice, dispute between the parties being arbitrable and the cause not being a deadwood.

4.1 Learned counsel for the respondents, on instructions and on the basis of short reply filed by way of affidavit dated 24.03.2026, did not dispute the existence and execution of arbitration agreement and submitted that they have no objection if sole arbitrator is appointed by this Court.

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** (paragraphs 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, in **Vidya Darolia’s** case (supra), 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 xxx xxx xxx

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.

9.1 Ms. Justice Daya Chaudhary, former Judge of this Court, residing at House No. 25, Sector 17, Panchkula, Mobile No. 97800 08137, is hereby appointed as Sole Arbitrator to adjudicate the disputes arising 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 her convenience.

11. The Arbitrator is appointed with the liberty to determine jurisdiction, including (but not limited to) ruling on any 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 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 Ms. Justice Daya Chaudhary, former Judge of this Court.

(SHEEL NAGU)
CHIEF JUSTICE

March 27, 2026
narotam

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