



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

260

ARB-235-2025 (O&M)

Date of Decision:12.01.2026

M/s Lakhbir Constructions through its partner

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Arvind Kashyap, Advocate for the petitioner.

Mr. Vishal Garg, Advocate for respondents.

JASGURPREET SINGH PURI J.(Oral)

1. The present is a petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeking appointment of an independent arbitrator in the present case.

2. Learned counsel for the petitioner submitted that there exists a valid work agreement between the parties, wherein an arbitration clause exists. The same has been attached with the present petition as Annexure P-1 and at Paragraph No.70 it has been so provided that all disputes, between the parties to the Contract (other than those for which the decision of the CWE or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of serving



officer having degree in engineering or equivalent or having passed final/direct final examination of Sub division-II of Institution of Surveyor (India) recognized by Government of India, to be appointed by the authority mentioned in the tender documents.

3. He submitted that in the aforesaid arbitration clause, it has been so provided that sole arbitrator shall be the serving officer of the respondent which otherwise is not permissible because of conflict of interest in view of Section 12(5) of the Act. He further submitted that since disputes arose between the parties, the petitioner invoked the aforesaid arbitration clause by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996 to the respondents, vide *Annexure P-9* dated 26.05.2023, however, no response has been received from the respondents. Rather, repeated requests were made in this regard and therefore, he submitted that this Hon'ble Court may appoint an independent and impartial arbitrator for adjudicating the dispute.

4. On the other hand, learned counsel appearing for the respondents submitted that there is no dispute with regard to the existence of the agreement, the arbitration clause contained therein, or the service of notice upon the respondents. However, the objection raised by the learned counsel for the respondents is that vide *Annexure R-1* dated 16.03.2021, the petitioner had given an undertaking, wherein it was stated that he will not resort to arbitration/court proceedings. He further submitted that once the petitioner had given such an undertaking to the respondents way back in the year 2021, the petitioner cannot now invoke the arbitration clause and seek appointment of an independent arbitrator and rather, he is estopped



from seeking appointment of an arbitrator in view of the aforesaid undertaking, *Annexure R-1*.

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

6. The agreement between the parties, the existence of the aforesaid arbitration clause, as well as the notice invoking the arbitration clause are not disputed by the learned counsel for the respondents. However, an objection has been raised by the learned counsel for the respondents—UOI that vide *Annexure R-1*, the petitioner had given an undertaking on 16.03.2021 by so stating that he will not resort to arbitration or court proceedings. During the course of arguments, this Court put a specific query to the learned counsel for the petitioner as to under what circumstances such an undertaking was given, to which he submitted that the said period was the COVID period as the undertaking is dated 16.03.2021 and the construction work was not completed at that time and in order to complete the construction work, such an undertaking was given, which is not binding upon the petitioner so far as invocation of the arbitration clause is concerned, as any undertaking given in restraint of arbitration or court proceedings is *non-est* and void.

7. A perusal of the aforesaid Annexure R-1 dated 16.03.2021 would show that the petitioner had given an undertaking to the effect that it would not resort to arbitration or court proceedings. On a query being raised to both the learned counsel for the parties during the course of hearing as to whether the agreement entered into between the parties, which contained the arbitration clause, was at any point of time amended, rescinded, or cancelled to which they submitted that the same was never amended, rescinded, or cancelled and the same continued to subsist. The



only reliance of the learned counsel for the respondents was upon *Annexure R-1*, which was in the nature of an undertaking, the justification whereof has been explained by the petitioner.

8. As to whether the aforesaid objection raised by the learned counsel for the respondents can constitute a ground for non-suiting the petitioner, the same can be considered in light of the law laid down by the Hon'ble Supreme Court pertaining to the scope of Section 11 of the Act. A Seven-Judge Constitution Bench of the Hon'ble Supreme Court in ***In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899, In Re"*** ***(2024) 6 SCC 1***, has observed that at the referral stage, while considering an application under Section 11 of the Act, the High Court is only required to examine the *prima facie* existence of an arbitration agreement between the parties. Issues relating to arbitrability or non-arbitrability of the disputes are to be decided by the arbitrator during the arbitration proceedings, and it is always open to the parties to raise such objections before the arbitrator. The relevant paragraphs of the aforesaid judgment are reproduced hereunder:-

"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. This Court is, therefore, of the considered view that all the essential conditions for the appointment of an arbitrator under Section 11 of the Act at the reference stage are satisfied. The aforesaid objection raised by the learned counsel for the respondents cannot constitute a ground for rejection of the application for appointment of an arbitrator. However, the respondents are always at liberty to raise any such plea or preliminary objection before the learned arbitrator at an appropriate stage.

10. In view of the aforesaid facts and circumstances, the present petition is allowed. Hon’ble Mr. Justice Shekher Dhawan, resident of House No.2109, Sector 21, Chandigarh, Mobile No. 8558809941 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.

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



- 12. Fee shall be paid to learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.
- 13. Learned Arbitrator is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Act.
- 14. A request letter alongwith a copy of the order be sent to Hon’ble Mr. Justice Shekher Dhawan.

12.01.2026
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(JASGURPREET SINGH PURI)
JUDGE

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