



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

ARB-374-2025 (O&M)

Date of Decision: 19.01.2026

M/s Gurinder Singh Contractor

.....Petitioner

Versus

The State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. R.K. Girdhar, Advocate for the petitioner.

Mr. Somesh Arora, Addl. A.G. Punjab.

JASGURPREET SINGH PURI J.(Oral)

1. The present is a petition filed under Section 11 read with Section 12 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 a valid agreement was entered into between the parties with regard to the work of construction of Disty and distribution system of Gogron life irrigation scheme off take at RD 85.200 Km of Kandi Canal State-II and the said agreement has been annexed with the present petition as Annexure A-1. He further submitted that in the aforesaid agreement, there exists a valid arbitration clause i.e. Clause 25(v), wherein it is provided that 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 for arbitration to a sole Arbitrator. He submitted that a pre-arbitral mechanism has been provided under the agreement for making claims before the respondents and the said mechanism has been duly exhausted by the petitioner and with regard to the same there is no dispute but thereafter when dispute was not settled between the parties, the petitioner invoked the aforesaid arbitration clause by issuing a notice to the respondents vide Annexure A-21 dated 22.02.2024. In response thereto, the respondents rejected the claim of the petitioner by placing reliance upon Clause 25(xvii) of the aforesaid agreement, which provides that 'neither party shall be entitled to bring a claim for arbitration, if it is not filed as per the time period already specified or within six months of the date of the completion of the work as certified by the Engineer or of the date of abandonment of the work or breach of contract under any of the clauses etc. He submitted that the aforesaid rejection of the invocation of the arbitration clause on the basis of Clause 25(xvii) was not sustainable, in view of the fact that the same is a matter to be decided by the learned Arbitrator, with regard to the non-arbitrability of the arbitration clause. He further submitted that there is no dispute regarding the agreement between the parties, the arbitration clause contained therein and the issuance of the legal notice under Section 21 of the Arbitration and Conciliation Act, 1996 to the respondents. So far as the aforesaid ground, on the basis of which the invocation of the arbitration clause has been rejected, the same would not constitute a ground at the stage of reference under Section 11 of the Act for this Court to non-suit the petitioner on the said issue. Therefore, he submitted that



this Hon'ble Court may appoint an independent and impartial arbitrator for adjudicating the dispute which has arisen between the parties.

3. On the other hand, learned State counsel submitted that there is neither any dispute regarding existence of the aforesaid agreement between the parties, nor is there any dispute with regard to the aforesaid arbitration clause contained therein and the service of notice invoking arbitration clause upon the respondents. He, however, submitted that the only objection raised by the respondent-State is that under Clause 25 of the agreement (Annexure A-1), there is Sub-clause (xvii) which provides that neither party shall be entitled to bring a claim for arbitration if the same is not filed within six months from the date of completion of the work as certified by the Engineer or from the date of abandonment of the work, or breach of contract under any of its clauses. He further submitted that in the present case, undisputedly, the work was completed in the year 2021 and in furtherance of the same completion certificate was issued on 25.03.2021 and it was after the expiry of the aforesaid period of six months that the arbitration clause was invoked by the petitioner and since the invocation was beyond the limitation prescribed under the said clause, this Court should decline to appoint an Arbitrator under Section 11 of the Act.

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

5. The aforesaid two clauses of the agreement, pertaining to arbitration, are required to be reproduced as under:-

25(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 for arbitration to a sole Arbitrator.”

25(xvii) “Neither party shall be entitled to bring a claim for arbitration, if it is not filed as per the time period already specified or within six months of the following:-

a) Of the date of completion of the work as certified by the Engineer or

b) Of the date of abandonment of the work or breach of contract under any of its clauses, or

c) Of its non-commencement or non resumption of work within 10 days of written notice for commencement or resumption as applicable, or

d) Of the cancellation, termination or withdrawal of the work from the Contractor in whole or in part and / or revision for closure of the contract, or

e) Of receiving an intimation from the Engineer that the final payment due or recover from the Contractor had been determined, for the purpose of payment/adjustment whichever is the latest. If the matter is not referred to arbitration within the period prescribed above, all the rights and claims of either party under the contract shall be deemed to have been forfeited and absolutely barred by the time for arbitration and even for civil litigation.”



6. It was so stated by the learned State counsel that the work stood completed on 13.03.2021 and therefore, the invocation of the arbitration clause is barred under Clause 25(xvii) of the agreement. On the other hand, learned counsel for the petitioner submitted that the said clause pertains only to the issue as to whether the dispute is arbitrable or non-arbitrable, which can only be decided by the learned Arbitrator.

7. The law in this regard, relating to the scope of the provisions of Section 11 of the Arbitration and Conciliation Act, 1996, has been dealt with in detail by Hon'ble Supreme Court in **SBI General Insurance Company Limited v. Krish Spinning, 2024 SCC Online SC 1754**, as well as in **"Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re" (2024) 6 SCC 1**. Therefore, the law with regard to scope of Section 11 of the Act is no longer res integra. The relevant portion of the judgment 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 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.”

8. 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.

xx

xx

xx

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. Recently, the Hon’ble Supreme Court in ***Office for Alternative Architecture v. Ircon Infrastructure and Services Ltd., 2025 SCC Online SC 1098***, observed that whether a matter falls under the excepted category or not cannot be considered at the time of the reference stage under Section 11 of the Act. The relevant portion of the aforesaid judgment is reproduced as under :-

6.The short question that falls for our consideration is whether while exercising power under Section 11 of the 1996 Act, the Court has to confine its consideration as to the existence of an arbitration agreement between the parties. If so, whether it would be permissible, while exercising jurisdiction under Section 11, to hold that some of the claims raised are non-arbitrable or fall within excepted category.

7. Sub-section (6A) of Section 11, which was inserted by Act 3 of 2016, with effect from 23.10.2015, makes it clear that while considering an application under sub-section (4) or sub-section (5) or sub-section (6), the Supreme Court or the High Court, as the case may be, shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration



agreement.

8. Act 33 of 2019 omitted sub-section (6A) but the amending Act has not been notified thus far. In consequence, sub-section (6A) of Section 11 of the 1996 Act remains in the statute book.

9. The statement of objects and reasons of the 2015 amendment with reference to insertion of sub-section (6A) in Section 11 of the 1996 Act, reads thus:

“(iii) an application for appointment of an Arbitrator shall be disposed of by the High Court or the Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of 60 days.

(iv) to provide that while considering any application for appointment of Arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues.”

10. The significance of the use of the expression “not other issues” in the statement of objects and reasons of the 2015 amendment was noticed by a seven-Judge bench of this Court in In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 18995, and it was observed:

“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 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.”

11. Relying on the above observations made by this Court in In Re: Interplay (supra), a three-judge bench of this Court in “SBI General Insurance Co. Ltd. v. Krish Spinning” observed:-

*“114.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 v. Durga Trading Corporation (supra) and adopted in ‘NTPC v. SPML Infra Limited (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)”.*

Emphasis Supplied

12. As the above decision has been rendered by a three-Judge bench of this Court after considering the seven-Judge bench decision of this Court in In Re: Interplay (supra), we are of the view that the respondent cannot profit



from certain observations made by a two-Judge bench of this Court in Emaar (supra). In our view, therefore, the High Court fell in error in bisecting the claim of the appellant into two parts, one arbitrable and the other not arbitrable, when it found arbitration agreement to be there for settlement of disputes between the parties. The correct course for the High Court was to leave it open to the party to raise the issue of non-arbitrability of certain claims before the arbitral tribunal, which, if raised, could be considered and decided by it.

10. Therefore, the law settled by Hon'ble Supreme Court is that the reference court under Section 11 of the Act is only required to examine *prima facie* existence of an arbitration clause. Whether the subject matter is arbitrable or not, falls within the exclusive domain of the arbitrator and not within the scope of the High Court at the stage of reference under Section 11 of the Act.

11. The aforesaid Clause 25(xvii) provides for limitation. In other words, as per learned State counsel, the subject matter of the dispute would be non-arbitrable. This aspect, as to whether it is arbitrable or non-arbitrable, lies within the scope of the arbitrator and not within the scope of this Court at the stage of reference under Section 11 of the Act. This becomes more clear from the fact that, so far as the aforesaid Clause 25(v), which is the basic clause providing for arbitration, is concerned, the same is not in dispute. Therefore, this Court is satisfied that there is a *prima facie* existence of the arbitration clause, and all the essential



conditions for the appointment of an arbitrator under Section 11 of the Act remain satisfied.

12. In view of the aforesaid facts and circumstances, the present petition is allowed. Hon'ble Ms. Justice Jaishree Thakur (Retd.), resident of House No.36, Sector 8-A, Chandigarh, Mobile No.9814125236, Email: jaishreethakur61@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.

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

14. Fee shall be paid to 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 Ms. Justice Jaishree Thakur (Retd.).

17. The respondent-State shall be at liberty to raise any objection pertaining to the arbitrability or non-arbitrability of the dispute before the learned Arbitrator at any appropriate stage and in accordance with law.

(JASGURPREET SINGH PURI)
JUDGE

19.01.2026

shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No