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

ARB-404-2025

Date of decision: 16.02.2026

**PUNJAB AGRO FOODGRAINS CORPORATION LTD. AND ANOTHER
...Applicant(s)**

VERSUS

**M/S NANAK RICE AND GENERAL MILLS AND ANOTHER
...Respondent(s)**

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

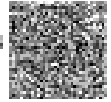
Present:- Mr. Somesh Gupta, Advocate for the applicants.

Mr. Mukand Gupta, Advocate for respondent No.1.

JASGURPREET SINGH PURI, J. (Oral)

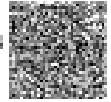
1. The present application has been filed under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeking appointment of an independent Arbitrator to adjudicate the disputes and differences which have arisen between the parties.

2. Learned counsel for the appellants submitted that there was an agreement between the parties vide Annexure P-1 containing an arbitration clause i.e. Clause 26, which provides for appointment of an Arbitrator. He further submitted that the applicant, which is a Procurement Agency had appointed an Arbitrator who passed an award but thereafter, when the respondents filed the objections under Section 34 of the Act, the same were allowed vide judgment dated 18.08.2022 (Annexure P-3) on the ground that the Arbitrator was an interested party and could not have been appointed as an



Arbitrator and therefore, the arbitral award itself was set aside. He further submitted that it was thereafter that a notice was issued to the respondents vide Annexure P-5 dated 13.11.2024 for fresh appointment of a Sole Arbitrator, to which the respondents filed a reply stating that there was no necessity to appoint an Arbitrator because there is no dispute left for adjudication and also on the ground that Section 11 is barred by *res judicata*. He further submitted that the aforesaid plea was not available with the respondents because once the arbitral award has been set aside on the ground that the Arbitrator was an interested party, which is violative of public policy, then a fresh Arbitrator is required to be appointed as neither there is any other remedy available with the applicant because of the existence of an arbitration clause nor the applicant can file a civil suit in this regard and therefore, any independent Sole Arbitrator may be appointed by this Court.

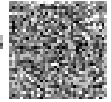
3. On the other hand, learned counsel for respondent No.1 submitted that there is no dispute with regard to the existence of the aforesaid agreement, arbitration clause and invocation of the said arbitration clause by way of issuance of notice vide Annexure P-5, to which respondent No.1 had filed a reply. He has however submitted that this Court may not appoint an Arbitrator in the present case as the said agreement is of the year 2013, which had its validity for only nine months and since the validity has already expired, no such Arbitrator can be appointed. He further submitted that there is no monetary dispute between the parties. He also submitted that the present application is barred by *res judicata* since earlier also an Arbitrator was appointed but the award was set aside by the learned Additional District Judge, Chandigarh



vide Annexure P-3 on the ground that the Arbitrator was an interested party because the said Arbitrator was the Legal Advisor of the applicants themselves.

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

5. There is no dispute with regard to the existence of the aforesaid agreement, the arbitration clause and invocation of the said arbitration clause by way of issuance of notice vide Annexure P-5. However, an objection was raised by the learned counsel for respondent No.1 that the agreement is of the year 2013, which was valid only for nine months and all the disputes have already been settled between the parties and therefore, there is no requirement of appointment of a fresh Arbitrator. This submission made by the learned counsel for respondent No.1 is not sustainable in view of the fact that it is a settled law that at the stage of reference under Section 11 of the Act, the Court is only to see *prima facie* existence of the arbitration clause and invocation thereof by issuance of notice and both the conditions are already fulfilled in the present case. The submission made by the learned counsel for respondent No.1 with regard to the validity of the agreement due to the efflux of time or whether any dispute still exists between the parties or not, shall lie within the domain of the learned Arbitrator and not before this Court at the reference stage. In this regard, reference can be made to the judgments passed by Hon'ble Supreme Court in **Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, in Re, (2024) 6 SCC 1** and **SBI General Insurance Co. Ltd. versus Krish Spinning, 2024 SCC OnLine SC 1754.**

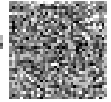


6. The relevant portion of the aforesaid judgment passed by the Seven-Judge Constitution Bench of Hon'ble Supreme Court in **Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, in Re, (2024) 6 SCC 1** is reproduced as under:-

"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.

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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

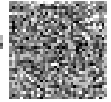


that the referral courts only need to consider one aspect to determine the existence of an arbitration agreement-whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, 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.”

7. The relevant portion of the judgment passed by 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.

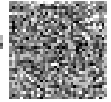
111. The use of the term ‘examination’ under Section 11(6-A) as distinguished from the use of the term ‘rule’ under Section 16 implies that the scope of enquiry under section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or 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 time bound 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)

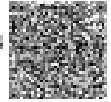


114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to 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.”

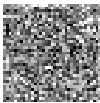
8. Second objection was raised by the learned counsel for respondent No.1 that the present application would not be maintainable, being barred by *res judicata*, on the ground that earlier the award was set aside by the learned Additional District Judge, Chandigarh, while exercising the powers under Section 34 of the Act. This submission made by the learned counsel for respondent No.1 is also not sustainable in view of the fact that it is a case where the Arbitrator appointed earlier was stated to be the Legal Advisor of the



applicants and therefore on this ground that the Arbitrator was an interested party, the learned Additional District Judge, Chandigarh, set aside the award vide Annexure P-3. Once the award is set aside, then any of the parties can always invoke the jurisdiction of the Court under Section 11 of the Act for the appointment of a fresh Arbitrator as the parties are restored to the original pre-arbitral award position. Reference in this regard can be made to the judgment passed by Bombay High Court in **Batliboi Environmental Engineering Limited versus Hindustan Petroleum Corporation Limited, 2025 SCC OnLine Bom 580**. The relevant portion of the aforesaid judgment is reproduced as under:-

“39. In view of the foregoing, I do not think it necessary to burden this judgement with any further prolixity with more analysis of every other judgement cited by either side on the doctrine of merger. In my opinion, the SC Judgement is clearly an opinion that the Arbitral Award ought to have been held as not being sustainable in exercise of the jurisdiction under Section 37 of the Act read with Section 34 of the Act. The Supreme Court explicitly ruled that it was not commenting on the merits. Taking such explicit findings into account and that too in the context of the specific nature of the jurisdiction that Section 34 and Section 37 of the Act entails, I am of the opinion that no case has been made out to deviate from the norm that the parties are restored to the original pre-Arbitral Award position. Therefore, necessarily, this Section 11 Application deserves to be allowed. Consequently, this Application is finally disposed of in the following terms:”

9. In view of the above, this Court is of the considered view that both the objections raised by the learned counsel for respondent No.1 are unsustainable in view of the settled law as aforesaid. The conditions *sine qua*



non for the purpose of appointment of an Arbitrator under Section 11 of the Act i.e. *prima facie* existence of the arbitration clause and its invocation by issuance of a notice, are satisfied in the present case.

10. In view of the above, the present application is allowed. Sh. Harnam Singh Thakur, District and Sessions Judge (Retired), resident of R2/EG 802, First Floor, DLF Hyde Park, New Chandigarh, mobile No.-8588800054, e-mail ID-thakurhs19@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.

11. Liberty is granted to respondent No.1 to take all the legally permissible pleas available to it in accordance with law before the learned Arbitrator at an appropriate stage.

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

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

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

15. A request letter alongwith a copy of the order be sent to Sh. Harnam Singh Thakur, District and Sessions Judge (Retired).

(JASGURPREET SINGH PURI)
JUDGE

16.02.2026
Chetan Thakur

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