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

ARB-463-2025 (O&M)

Date of Decision:17.03.2026

Kenzo Nutrico Private Limited

.....Petitioner

Versus

Tata Consumer Products Limited

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Nilesh Bhardwaj, Advocate and
Ms. Vanshika Daaria, Advocate for the petitioner.

Mr. Samarth Sagar, Advocate and
Mr. J.S. Sibia, Advocate for the respondent.

JASGURPREET SINGH PURI J.(Oral)

1. The present is a petition filed under Section 11 (5) read with Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeking appointment of a sole arbitrator in the present case.

2. Learned counsel for the petitioner submitted that there exists an agreement between the parties, which has been attached with the present petition as Annexure P-4, and the same is in the nature of a manufacturing and supply agreement containing an arbitration clause at paragraph No. 18. As per clause 18.2 thereof, in case a dispute arises between the parties, the matter is to be resolved by arbitration in accordance with the Arbitration and Conciliation Act, 1996, by an arbitrator appointed in accordance with the said Act. He further submitted that since a dispute arose between the

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parties, the petitioner served a notice dated 23.03.2024 upon the respondent vide Annexure P-8 invoking the arbitration clause, but the respondent did not accept the aforesaid request for appointment of an independent Sole Arbitrator and instead initiated mediation proceedings qua the petitioner; however, the mediation failed. Thereafter, the petitioner also issued a second notice for appointment of an arbitrator. He submitted that to the said second notice, the respondent filed a reply vide Annexure P-10, wherein in paragraph No. 19, it proposed, without prejudice to its rights, the name of a former Judge of the Delhi High Court as an arbitrator, but the same was not acceptable to the petitioner. The present petition has thus been filed under Section 11 of the Act, since the process and mechanism for appointment of an arbitrator by mutual consent has failed. Accordingly, he submitted that this Hon'ble Court may appoint a Sole Arbitrator to adjudicate upon the dispute between the parties.

3. On the other hand, learned counsel appearing on behalf of the respondent submitted that there is no dispute with regard to the existence of the agreement (Annexure P-4) or the arbitration clause contained therein. It is also not in dispute that the petitioner invoked the arbitration clause by issuing notice (Annexure P-8) to the respondent and that the respondent had proposed the name of an arbitrator; however, the same could not be finalized by mutual consent. He, however, submitted that the pre-arbitral mechanism for having mutual discussions for amicable settlement was not adhered to by the petitioner.

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



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5. The existence of the agreement containing the arbitration clause and the invocation thereof by issuance of notice are not in dispute. The respondent, in its reply, has also proposed the name of an arbitrator, however, no consensus could be reached between the parties by mutual consent. Consequently, the present petition has been filed under Section 11 of the Act, as the agreed mechanism for appointment of an arbitrator has failed.

6. In the present case, the existence of an arbitration clause in the agreement between the parties and the invocation thereof by the petitioner are not in dispute. The only objection raised by learned counsel for the respondent is that prior to invoking arbitration, the petitioner did not initiate negotiations for amicable settlement. However, such an objection cannot be a ground to non-suit the petitioner under Section 11 of the Act. It is well settled that while exercising jurisdiction under Section 11 of the Act, the Court is only required to examine the *prima facie* existence of an arbitration clause and its invocation-nothing more and nothing less and is not to conduct a mini trial.

7. The scope and nature of jurisdiction to be exercised by this Court under Section 11 of the Act is no longer *res integra*. The same stands authoritatively settled by the Hon'ble Supreme Court in "***SBI General Insurance Company Limited Vs. Krish Spinning***", 2024 SCC Online SC 1754 and also another judgment of Hon'ble Supreme Court in "***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In***



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Re” (2024) 6 SCC 1 and therefore, the issue stands conclusively settled.

The relevant portion of the aforesaid judgment of Hon’ble Supreme Court 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



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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.



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[...]

(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



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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



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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



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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



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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. In view of the aforesaid facts and circumstances, this court is of the considered view that both the conditions for appointment of an arbitrator under Section 11 of the Act at the reference stage are satisfied.

10. Consequently, the present petition is allowed. Hon’ble Mrs. Justice Meenakshi I Mehta, Former Judge of this Court, resident of House No. 358, Sector-2, MDC, Panchkula (Haryana), Mobile No 9416877277, E-mail:mimehta1964@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. Parties are directed to appear before learned Arbitrator on date, time and place to be fixed and communicated by learned Arbitrator at her 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 Mrs. Justice Meenakshi I Mehta, Former Judge of this Court.

17.03.2026

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**(JASGURPREET SINGH PURI)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No