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

**ARB-589-2025 (O&M)
Date of Decision: 16.03.2026**

Shailendra Mohan Saxena

.... Applicant

Versus

M/s S.P. Singla Constructions Private Limited

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Niraj Kumar Sharma, Advocate
for the applicant (through V.C.).

Mr. Dharampal Sharma, Advocate,
for the respondent (through V.C.).

JASGURPREET SINGH PURI, J. (ORAL)

1. The present application has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') praying for appointment of a Sole Arbitrator to adjudicate upon the disputes which have arisen between the parties.

2. Learned counsel for the applicant has caused appearance through video conferencing and submitted that an appointment letter dated 04.09.2023 (Annexure P-2) was issued to the applicant by the respondent vide which he was appointed as Senior Manager (Launching & Erection) in Grade M2. The said appointment letter contains a valid arbitration clause under the heading "Disputes & Arbitration" which provides that any dispute or difference or claim arising in connection with this contract shall be resolved by reference to arbitration by a Sole Arbitrator to be appointed by the Company at its sole discretion. It further provides that the arbitration proceedings shall be governed by the Arbitration and Conciliation Act and



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the venue of the arbitration shall be Panchkula. He further submitted that the unilateral appointment of the Sole Arbitrator at the discretion of the respondent-Company is not permissible under the law in view of the amendment of the Act which was carried out in the year 2015 whereby Section 12(5) of the Act was added as well as the law settled by Hon'ble Supreme Court in "*Perkins Eastman Architects DPC Vs. HSCC (India) Ltd.*", **2020(20) SCC 760**. He also submitted that a notice under Section 21 of the Act invoking the aforesaid arbitration clause was issued to the respondents by way of a registered A.D. Post dated 05.06.2025 vide Annexure P-9, but the Arbitrator could not be appointed by mutual consent. Therefore, the present application has been filed under Section 11 of the Act for appointment of an independent Sole Arbitrator.

3. On the other hand, learned counsel for the respondent has caused appearance through video conferencing and submitted that although the applicant was designated as Senior Manager (Launching & Erection) in Grade M2 in the appointment letter, but he was actually discharging the functions of a Workman. Therefore, no Arbitrator can be appointed in the present case. He further submitted that there is no dispute with regard to aforesaid appointment letter (Annexure P-2) which contains the arbitration clause. He further submitted that there is also no dispute that the aforesaid arbitration clause has been invoked by the applicant vide Annexure P-9. However, he raised an objection that the dispute is non-arbitrable dispute and referring the matter to an Arbitrator would be a futile exercise, as the applicant never worked as Senior Manager (Launching & Erection) but was discharging the functions of a Workman.

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



5. In the present case, the applicant was appointed as Senior Manager (Launching & Erection) in Grade M2 by way of an appointment letter (Annexure P-2), which is not disputed by learned counsel for the respondent. The said appointment letter contains an arbitration clause at Paragraph No.12, pertaining to “Dispute and Arbitration”, which reads as under:

“12. Disputes & Arbitration

Any dispute or difference or claim arising in connection with this contract shall be resolved by reference to arbitration by a sole arbitrator appointed by the company at its sole discretion. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996. The language of arbitration shall be English. Each of company or employee should be respectively entitled to approach the court of competent jurisdiction for such interim reliefs as the company - or the employee may in its discretion deem fit. The venue of arbitration shall be at Panchkula Court (Haryana) shall have exclusive jurisdiction. The award of the arbitrator shall be final and binding on the parties. The governing law shall be the law of India.”

6. The aforesaid appointment letter containing the arbitration clause and its invocation by way of notice under Section 21 of the Act (Annexure P-9) is not in dispute. The objection raised by learned counsel for the respondent was that the dispute is non-arbitrable and also that the petitioner worked as a Workman and not as a Senior Manager (Launching & Erection) because mere mentioning of the designation of Senior Manager (Launching & Erection) does not mean that the applicant worked on that post and therefore, the matter be not referred to the Arbitrator. The aforesaid



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objection raised by learned counsel for the respondent is totally unsustainable and contrary to law. 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 an arbitration clause in the agreement and its invocation under Section 21 of the Act and these two essential conditions have not been disputed by learned counsel for the respondent. Whether the present dispute is arbitrable or non-arbitrable does not fall within the scope of this court at the reference stage. This Court is not to conduct mini trial as to whether the applicant discharged his duties as a Senior Manager or as a Workman as that issue does not fall within the scope of this Court at this stage. A reference can be made in this regard 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 in "*SBI General Insurance Company Limited Vs. Krish Spinning*", 2024 SCC Online SC 1754 wherein it was so held that the scope of examination under Section 11(6-A) of the Act is confined to the existence of an arbitration agreement on the basis of Section 7 of the Act. The use of the term 'examination' under Section 11(6-A) as distinguished from the use of term 'rule' under Section 16 of the Act 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 and 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.

7. A 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: case (Supra)* had observed that at the stage of reference under Section 11 of the Act, the Court has only to see *prima facie* existence of an arbitration clause and its invocation thereof. The relevant portion of the said judgment 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.”

8. The relevant portion of the judgment passed by Hon’ble Supreme Court in ***SBI General Insurance Company Limited’s case (Supra)*** is also 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 non-existent 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.”

9. In view of the above, the aforesaid objections raised by leaned counsel for the respondent is hereby rejected.

10. Consequently, the present application is allowed. Ms. Puneeta Sethi, Advocate, resident of Kothi No.843, Sector 16-D, Chandigarh-160015, Mobile No.9815264904 & 7973537026, Email ID: puneeta_sethi26@yahoo.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 the learned Arbitrator on



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date, time and place to be fixed and communicated by learned Arbitrator at her convenience.

12. Fee shall be paid to the 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 Ms. Puneeta Sethi, Advocate.

16.03.2026

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(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |