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

ARB-596-2025

Date of decision : 13.02.2026

M/s KMV Projects Ltd.

.....Applicant

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE

Present: Mr. Avinash K. Trivedi, Advocate (through video conferencing),
for the applicant.

Mr. Neeraj Gupta, Addl. Advocate General, Haryana.

SHEEL NAGU, CHIEF JUSTICE

1. Instant application u/s 11 (6) of Arbitration and Conciliation Act, 1996 ('1996 Act' for brevity), seeks appointment of Arbitrator.
2. Reply filed on behalf of the respondents has been perused.
3. Letter of Acceptance dated 16.04.2021 (Annexure P-6) and Contract Agreement dated 20.04.2021 (Annexure P-7) were executed between the rival parties, containing an arbitration clause as follows :

“23.9. *Arbitration*

(a) Where any of the party is not satisfied with the order passed by the competent authority/Standing Empowered Committee can apply for appointment of Arbitrator. In case the party invoking arbitrator is contractor he shall deposit 2% of claim amount with Engineer-in-Charge. On termination of the arbitration



proceedings, this fee shall be adjusted against the cost, if any, awarded by the arbitrator against the claimant party and the balance remaining after such adjustment, and in the absence of such cost being awarded, the whole of the sum bill will be refunded within one month of the date of award. An Arbitral Tribunal consisting of 3 arbitrators, one each to be appointed by the Employer after taking approval from Engineer-in-Chief and the contractor and the third arbitrator to be chosen by the two arbitrators so appointed by both the parties to act as Presiding Arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Administrative Secretary, I&WR Department Haryana (Principal Secretary/Additional Chief Secretary) as the case may.

- (b) If one of the parties fails to appoint its arbitrator in pursuance of sub-clause (a) above within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the Administrative Secretary, I & WR Department Haryana shall appoint the arbitrator. A certified copy of the order of the Administrative Secretary, I & WR Department, Haryana making such an appointment shall be furnished to each of the parties.*
- (c) Arbitration proceedings shall be held in India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.*
- (d) The decision of the majority of arbitrators shall be final and binding upon both parties. The cost and expenses of Arbitration proceedings will be paid as*



provided hereinafter. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also the fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself. The fee and expenses of presiding Arbitrator shall be borne by both the parties equally.

- (e) Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the employer shall not be withheld, unless they are the subject matter of the arbitration proceedings.*
- (f) The fee and other charges payable to an arbitrator shall be as per clause 25 of "THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2015."*

3.1 Dispute erupted between the parties. The applicant served notice dated 05.04.2025 (Annexure P-18) upon the respondent seeking resolution of dispute through Arbitral Tribunal, but no appointment was made by the respondent. Further, in terms of clause 23.9 (b) of Conditions of Contract, applicant sent notice dated 02.07.2025 (Annexure P-21) through e-mail dated 07.07.2025 (Annexure P-22) and through speed post dated 08.07.2025 (Annexure P-23), requesting competent authority, i.e. Administrative Secretary, for appointment of respondent's nominee but no appointment has been made till date.

4. Learned counsel for the respondent – State could not dispute existence and execution of arbitration agreement, service of notice, dispute between the parties being arbitrable and the cause not being a deadwood. It is, however, submitted that as per clause 23.9 (a) of the conditions of the contract agreement, the contractor (applicant) has to pre-deposit 2% of the claim



amount, and claims of the applicant are time barred, since reference to the competent authority was not made within the stipulated period of 120 days from the date of completion of work. The work stood completed on 04.09.2023 (Annexure P-17), whereas the applicant's notice of arbitration was served only on 05.04.2025, i.e. after a delay of approximately 580 days.

5. The law on the scope of examination u/s 11 (6) of 1996 Act is well settled. The Apex Court in **Vidya Drolia Vs. Durga Trading Corporation, (2021) 2 SCC 1** (paragraphs 154.2, 154.3 and 154.4) held that the Court may undertake a *prima facie* examination at this stage and reject an application where it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable. In this context, the relevant extract of the said judgment is as follows :

“154.2 Scope of judicial review and jurisdiction of the Court under Sections 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.

154.3 The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of “second look” on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34 (2) (a) or sub clause (i) of Section 34 (2) (b) of the Arbitration Act.

*154.4 Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is **non-existent, invalid or the disputes are non-arbitrable**, though the nature and facet of non-arbitrability would, to some extent,*



determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably “non arbitrable” and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism.”

Further, in **Vidya Darolia’s** case (supra), it was held as under :

“244. Before we part, the conclusions reached, with respect to Question 1, are :

244.1 Sections 8 and 11 of the Act have the same ambit with respect to judicial interference.

*244.2 **Usually, subject matter arbitrability cannot be decided at the stage of Section 8 or 11 of the Act, unless it is a clear case of deadwood.***

244.3 The court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of non existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding.

244.4 The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above i.e. “when in doubt, do refer”.



244.5 *The scope of the court to examine the prima facie validity of an arbitration agreement includes only :*

244.5.1 *Whether the arbitration agreement was in writing?*

Or

244.5.2 xxx xxx xxx

244.5.3 *Whether the core contractual ingredients qua the arbitration agreement were fulfilled?*

244.5.4 *On rare occasions, whether the subject matter of dispute is arbitrable?”*

6. In **NTPC Ltd. Vs. SPML Infra Ltd., 2023 (9) SCC 385**, the Apex Court while relying on the principle laid down in **Vidya Drolia** (supra) judgment, has reiterated :

“26. As general rule and a principle, the arbitral tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. As an exception to the rule, and rarely as a demurrer, the referral court may reject claims which are manifestly and ex-facie non-arbitrable.”

7. Similarly, in **DLF Home Developers Ltd. Vs. Rajapura Homes (P) Ltd., (2021) 2 SCC 675**, the Apex Court reiterated that :

“19. To say it differently, this Court or a High Court, as the case may be, are not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen Arbitrator. On the contrary, the Court(s) are obliged to apply their mind to the core preliminary issues, albeit, within the framework of Section 11 (6-A) of the Act. Such a review, as already clarified by this Court, is not intended to usurp the jurisdiction of the Arbitral Tribunal but is aimed at streamlining the process of arbitration. Therefore, even when an arbitration agreement exists, it would not prevent the court to decline a prayer for



reference if the dispute in question does not correlate to the said agreement.”

8. Pre-requisites for invoking power u/s 11 (6) of 1996 Act appear to be satisfied.

9. It is seen that the arbitration clause suggests constitution of a three member Arbitral Tribunal, however, parties have consented to the appointment of Sole Arbitrator.

10. Accordingly, this application is allowed.

11. Mr. Justice Gurmit Ram, former Judge of this Court, residing at House No. 84, Sector 77, Judges Enclave, SAS Nagar Mohali, Mobile No. 85588 09938, is hereby appointed as Sole Arbitrator to adjudicate the disputes arising between the parties, subject to compliance of statutory requirements under 1996 Act before proceeding ahead.

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

13. The Arbitrator is appointed with the liberty to determine jurisdiction, including (but not limited to) ruling on any objections with respect to the existence or validity of the arbitration agreement and the scope of the Arbitrator's authority in accordance with Section 16 of 1996 Act.

13.1 Needless to say that the aforesaid aspects, i.e. with regard to pre-deposit of 2% of the claim amount and the claim being time barred, can always be raised by the respondents before the learned Arbitrator, at an appropriate stage, which shall thereafter be considered by the learned Arbitrator, in accordance with law.



14. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of 1996 Act, as amended from time to time, or fee as agreed to by the parties.
15. The Arbitrator is requested to complete the arbitral proceedings as per time limit stipulated u/s 29-A of 1996 Act.
16. Any observation made hereinabove is meant merely for passing this order and shall not be construed as expression on merits of the dispute.
17. A request letter along with copy of this order be sent to Mr. Justice Gurmit Ram, former Judge of this Court.

(SHEEL NAGU)
CHIEF JUSTICE

February 13, 2026
narotam

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