

ARB-662-2025 (O&M) -1-

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

ARB-662-2025 (O&M)
Date of Decision:26.02.2026

Sandeep Kumar

.....Petitioner

Versus

Indian Oil Corporation Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Ms. Ankita Ahuja, Advocate and
Mr. Jagdeep Singh, Advocate, for the petitioner.

Mr. Naveen Batra, Advocate for the respondent.

JASGURPREET SINGH PURI J.(Oral)

1. The present is a petition 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 Sole Arbitrator to adjudicate the disputes and differences which have arisen between the parties.

2. Learned counsel for the petitioner submitted that there is an agreement dated 14.05.2020 (Annexure A-2) between the petitioner and the respondent, which contains an arbitration clause. Vide Article-1, the documents which shall constitute the contract documents would be the contract itself, tender documents as defined in the General Instructions to tenderers and Letter of Acceptance. Vide Article-4, jurisdiction has been defined, wherein it is so provided by way of a non-obstante clause that any and all actions and proceeding arising out of or relative to the contract (including any arbitration in terms thereof) shall be only in the Court of

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Competent Civil Jurisdiction in this behalf at Panipat. (Where the contract has been signed on behalf of the owner) and only the said Court(s) shall have jurisdiction to entertain and try any such action(s) and/or proceeding(s) to the exclusion of all other Courts. Since the General Conditions of Contract are applicable to the main contract, learned counsel referred to the General Conditions of Contract, specifically Section 9 thereof pertaining to arbitration. Clause 9.0.4.0 provides that the venue of arbitration under Clause 9.0.1.0 shall be at New Delhi, provided that the Arbitrator may with the consent of the owner and the contractor agree upon any other venue and as per Clause 9.0.1.0, subject to the provisions of Clauses 6.7.1.0, 6.7.2.0 and 9.0.2.0, any dispute arising out of a notified claim of the contractor included in the final bill of the contractor in accordance with the provisions of Clause 6.8.3.0 hereof and any dispute arising out of any claim of the owner against the contractor, shall be referred to the arbitration of a Sole Arbitrator and in this way, the arbitration process has been defined in the aforesaid clause, which provides that with regard to the notified claim of the contractor, who is the present petitioner, the matter is to be referred to a Sole Arbitrator. She further submitted that after a dispute arose between the parties, the petitioner invoked the arbitration clause by issuance of notice dated 12.12.2024 (Annexure A-7) to the respondent but the respondent denied the same by way of reply vide Annexure A-8. She submitted that in these circumstances, since the arbitration mechanism has failed, the present petition has been filed under Section 11 of the Act for appointment of a Sole Arbitrator.



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4. 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 aforesaid contract and the aforesaid clauses which have been referred to by learned counsel for the petitioner. The only objection of the respondent is with regard to the non-arbitrability of the dispute. He submitted that as per Clause 9.0.1.0, any dispute arising out of a notified claim of the contractor or any claim(s) of the owner against the contractor shall be referred to the arbitration of a sole arbitrator. The contractor shall, however, be entitled to raise as a set-off defence or counter claim any claim which is not a notified claim included in the contractor's final bill. He further submitted that whether it is notified claim or not has to be decided by the General Manager. He also submitted that since it is not a notified claim, it cannot be referred to arbitration under Section 11 of the Act.

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

6. Article-1, Article-4 and Clause 9.0.1.0 are reproduced as under:-

“ARTICLE-1

CONTRACT DOCUMENTS

1.1 The following documents shall constitute the contract documents, namely:

a) This contract:

b) Tender documents as defined in the General Instructions to tenderers:

*c) Letter of Acceptance No. **LOA No. 26235738**
dtd 18.12.2019*

1.2 A copy of each of the Tender Documents is annexed hereto and the said copies have been collectively marked Annexure-A while a copy of the Letter of Acceptance of



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*Tender along with annexures thereto are annexed hereto
& copies have been collectively marked as Annexure-B.*

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ARTICLE-4

JURISDICTION

4.1 Notwithstanding any other court or courts having jurisdiction to decide the question(s) forming the subject-matter of the reference if the same had been the subject matter of a suit, any and all actions and proceeding arising out of or relative to the contract (including any arbitration in terms thereof) shall be only in the Court of Competent Civil Jurisdiction in this behalf at Panipat. (Where this contract has been signed on behalf of the Owner) and only the said Court(s) shall have jurisdiction to entertain and try any such action(s) and/or proceeding(s) to the exclusion of all other Courts.

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9.0.1.0:- Subject to the provisions of Clauses 6.7.1.0. 6.7.2.0 and 9.0.2.0 hereof, any dispute arising out of a Notified Claim of the CONTRACTOR included in the Final Bill of the CONTRACTOR in accordance with the provisions of Clause 6.6.3.0 hereof, and any dispute arising out of any claim(s) of the OWNER against the CONTRACTOR shall be referred to the arbitration of a Sole Arbitrator selected in accordance with the provisions of Clause 9.0.1.1 hereof. It is specifically agreed that the OWNER may prefer its claim(s) against the CONTRACTOR as counter-claim(s) If a Notified Claim of the CONTRACTOR has been referred to arbitration. The CONTRACTOR shall not, however, be entitled to raise as a set-off defence or counter-claim any claim which is not a Notified Claim included in the CONTRACTOR's Final Bill in accordance with the provisions of Clause 6.6.3.0



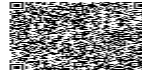
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hereof.”

8. The aforesaid clauses are not in dispute and in this way, the arbitration clause inserted is also not in dispute and the invocation thereof vide notice dated 12.12.2024 (Annexure A-7) is also not in dispute since reply was filed by the respondent to the notice of invocation.

9. The only objection raised by learned counsel for the respondent was with regard to the fact that the claim raised by the petitioner is not a notified claim and as per Clause 9.0.1.0, only a notified claim can be referred to the Arbitrator. Learned counsel for the respondent, at the time of the arguments, referred to a judgment of Hon'ble Supreme Court in ***Indian Oil Corporation Limited Vs. NCC Limited, (2023) 2 SCC 539***, to contend that if the claim is not a notified claim, it falls within the category of an excepted matter. However, this Court is unable to accept the contention of learned counsel for the respondent in view of the subsequent judgments of Hon'ble Supreme Court in ***SBI General Insurance Company Limited Vs. Krish Spinning***, 2024 SCC Online SC 1754, wherein the aforesaid judgment of ***Indian Oil Corporation Limited's case(Supra)*** was also considered.

10. The law laid down by the Hon'ble Supreme Court in ***SBI General Insurance Company Limited's case (supra)*** 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 Re” (2024) 6 SCC 1***, is therefore that at the time of the reference stage under Section 11 of the Act, the Court would not conduct a



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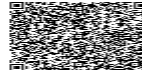
mini-trial and it would only see the *prima facie* existence of an arbitration clause and the invocation thereof. The detailed examination of evidence as to whether the dispute is arbitrable or not, for any reason, is not to be gone into by the Court at the reference stage under Section 11 of the Act. It is only the *prima facie* existence of an arbitration clause and its invocation, nothing more, nothing less. The relevant portion of the aforesaid judgment of 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



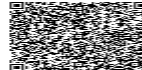
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Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re: Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and 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-



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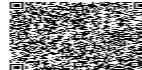
arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra).

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.”

11. The relevant portion of the aforesaid judgment of Hon'ble Supreme Court in ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re Case (Supra)*** is 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



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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



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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.”

12. Recently, the Hon’ble Supreme Court in ***Office for Alternative Architecture v. Ircon Infrastructure and Services Ltd., 2025 SCC Online SC 1098***, dealt with this issue and observed that whether a matter falls under the excepted category 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 :-



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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.”



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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)”.



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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.

13. In the present case, the objection raised by learned counsel for the respondent is that it was not a notified claim, whereas it was the contention of learned counsel for the petitioner that it is a notified claim. This Court therefore would not go into this aspect as to whether it is a notified claim or not because there is a *prima facie* existence of an arbitration clause and its invocation. This Court is, therefore, guided by the aforesaid law laid down by the Hon'ble Supreme Court in ***SBI General Insurance Company Limited's case (supra)*** and in ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re (supra)*** and also ***Office for Alternative Architecture v. Ircon Infrastructure and Services Ltd., 2025 SCC Online SC 1098***

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14. In view of the aforesaid facts and circumstances, the present petition is allowed. Ms.Anjali Kukar, Advocate, resident of Flat No.7, Angel Apartments, Zirakpur, Mobile No. 9814214144, Email ID: anjalikukar.adv@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.

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

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

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

18. A request letter alongwith a copy of the order be sent to Ms.Anjali Kukar, Advocate.

26.02.2026*rakesh***(JASGURPREET SINGH PURI)****JUDGE**

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