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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-650-2024 (O&M)
Date of decision: 24.03.2026

BALAJI AUTOMOBILES

...Applicant(s)

VERSUS

M/S HERO MOTOCORP LTD. AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Rahul Deswal, Advocate
for the applicant.

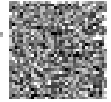
Mr. Rajat Khanna, Advocate and
Mr. Vijay Pratap Singh, Advocate
for respondent No.1.

Mr. Priyanshu Kamra, Advocate
for respondent No.2.

Mr. Vidul Kapoor, Advocate
for respondent No.3.

JASGURPREET SINGH PURI, J. (Oral)

1. The present application has been filed under Section 11(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. At the outset, learned counsel for the applicant submitted that the agreement (Annexure P-1) in the present case was executed between the applicant and respondent No.2 and so far as respondents No.1 and 3 are



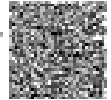
concerned, although there will be claims against them but an appropriate application will be filed at an appropriate stage before the learned Arbitrator for raising such claims and at this stage, has sought permission to delete respondents No.1 and 3 as they were not signatories to the aforesaid agreement and to proceed only against respondent No.2, who is a signatory to the agreement.

3. The aforesaid request made by the learned counsel for the applicant is accepted.

4. It is directed that respondents No.1 and 3 be deleted from the array of parties. Registry is directed to carry out the necessary corrections.

5. Learned counsel for the applicant submitted that there was an agreement between the applicant and respondent No.2, which was duly signed by both the parties, with the applicant acting as the authorized representative of the dealer. He further submitted that in the aforesaid agreement, there is an arbitration clause i.e. Clause 28, which provides that in the event of any dispute arising out of or in relation to the agreement, the same shall be decided by arbitration in accordance with the provision of the Arbitration and Conciliation Act, 1996. He also submitted that since a dispute arose between the parties, the applicant invoked the aforesaid arbitration clause by issuing a notice dated 05.12.2024 (Annexure P-8) but no response was received from respondent No.2 and therefore, the present application has been filed under Section 11 of the Act seeking appointment of an independent Arbitrator.

6. On the other hand, Mr. Priyanshu Kamra, learned counsel for respondent No.2 submitted that there is no dispute with regard to existence of



the agreement as well as the arbitration clause and it is also not disputed that the applicant invoked the arbitration clause by issuing a notice vide Annexure P-8, to which no reply was filed. He has however submitted that he has an objection to the present arbitration case filed under Section 11 of the Act on the ground that no dispute exists between the applicant and respondent No.2 and the main dispute of the applicant is with respondents No.1 and 3, who have already been deleted from the array of parties on the request of the learned counsel for the applicant and since no dispute exists between the applicant and respondent No.2, the present arbitration case is liable to be dismissed. He also submitted that the aforesaid agreement had a tenure of one year, which has already expired and therefore, no Arbitrator can be appointed in this regard.

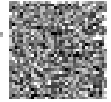
7. I have heard the learned counsels for the parties.

8. The agreement between the applicant and respondent No.2 is not in dispute. The arbitration clause i.e. Clause 28 contained in the agreement is also not in dispute. The aforesaid Clause 28 is reproduced as under:-

“28. That in the event of any dispute arising out of or in relation to this agreement, the same shall be decided by arbitration in accordance with the provision of the Arbitration and Conciliation Act, 1996.”

9. The fact that the applicant invoked the aforesaid arbitration clause by issuing a notice dated 05.12.2024 (Annexure P-8) has also not been disputed by the learned counsel for respondent No.2.

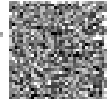
10. The first objection raised by the learned counsel for respondent No.2 was that there is no dispute between the applicant and respondent No.2 because the real dispute lies with respondents No.1 and 3. The second objection



raised by learned counsel for respondent No.2 was with regard to one year tenure of the agreement. This Court is of the considered view that both the aforesaid objections are not sustainable in view of the fact that in the present case, not only there is a *prima facie* existence of the arbitration clause but the same has also been admitted by the learned counsel for respondent No.2 and in this way, the agreement containing the aforesaid arbitration clause remains undisputed. Furthermore, invocation of the Clause by way of issuance of notice vide Annexure P-8 is also undisputed and therefore, all the essential conditions for appointment of a Sole Arbitrator under Section 11 of the Act are satisfied.

11. The law regarding the scope of Section 11 of the Act at the reference stage is no longer *res integra*. It was laid down by Hon'ble Supreme Court in **SBI General Insurance Co. Ltd. versus Krish Spinning, 2024 SCC OnLine SC 1754** and also in **Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re, (2024) 6 SCC 1** that at the time of reference stage under Section 11 of the Act, the Court would not conduct a 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



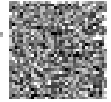
basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

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 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

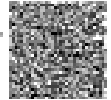


any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, 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

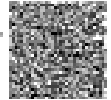


remain in existence even after the original contract stands discharged by “accord and satisfaction”

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.”

12. Apart from the above, 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:-

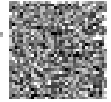
“120. In view of the above discussion, we formulate our conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the substantive independence 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 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

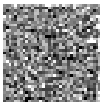


existence and validity of an arbitration agreement to be decided by arbitral tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia (supra) in the context of Section 8 and section 11 of the Arbitration Act.

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.”

13. So far as the second argument raised by the learned counsel for respondent No.2 with regard to one year tenure of the agreement is concerned, the same also falls within the scope of the learned Arbitrator and not before this Court.

14. In view of the above, the present application is allowed. Ms. Justice Nirmaljit Kaur, a former Judge of this Court, resident of # 188, Sector 11-A, Chandigarh, Mobile No.-9610478000, E-mail ID-jnjkmahal@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. Liberty is granted to the applicant to file an appropriate application before the learned Arbitrator for the impleadment of any other party, if permissible under the law. Similarly, liberty is granted to respondent No.2 to file an appropriate application before the learned Arbitrator with regard to the aforesaid two objections raised before this Court, in accordance with law and at an appropriate stage.

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

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

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

19. A request letter alongwith a copy of the order be sent to Ms. Justice Nirmaljit Kaur, a former Judge of this Court.

24.03.2026
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No