

2026:PHHC:026560-DB



ARB-701 of 2025

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

**ARB-701 of 2025
Date of decision: 13.02.2026**

TATA PROJECTS LTD.
....Petitioner

VS.
DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED.

... Respondents

**ARB-705 of 2025
Date of decision: 13.02.2026**

TATA PROJECTS LTD.
....Petitioner

VS.
DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED.

... Respondents

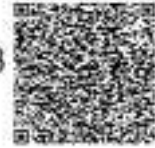
CORAM: HON’BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE

Present: Mr. Gaurav Luvania, Advocate (Arguing Counsel) (through V.C.)
Mr. Siddharth Gupta, Advocate (through V.C.)
for the petitioner(s).
Mr. Neeraj Gupta, Addl. Advocate General, Haryana.

SHEEL NAGU, CHIEF JUSTICE (Oral)

1. Instant applications u/s 11 (6) of Arbitration and Conciliation Act, 1996 (for short, ‘1996 Act’), seeks appointment of Sole Arbitrator.
2. The rival parties herein entered into two agreements dated 12.01.2018 and 12.12.2018 pertaining to execution of works under the Gurugram Smart City Project, involving underground cabling, allied electrical infrastructure works and obligations of similar nature. Disputes are stated to have

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arisen out of the said agreements, and the petitions arising therefrom are interconnected and are being dealt with together.

3. Reply filed on behalf of Respondent is taken on record and perused.
4. Agreements entered into by rival parties contain an arbitration clause, reproduced as follows:-

“56. Arbitration:

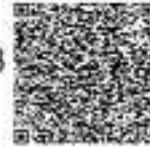
All matters, question, disputes, differences and/or claims arising out of and/ or concerning and/or in connection and/or in consequences or relating to this Contract whether or not obligations of either of both parties under this Contract be subsisting at the time of such dispute and whether or not this Contract has been terminated or purported to be terminated or completed, shall be referred to the Sole Arbitration of the MD, DHBVN or an Officer appointed by the MD, DHBVN as his nominee. The Award of the Arbitrator shall be final and binding on the parties to this Contract. Subject to aforementioned provisions, the provisions of Arbitration & Conciliation Act 1996 (and its amendments 2015) and the rules there under and statutory modifications thereof for the time being in force, shall be deemed to apply to the Arbitration proceedings under this Clause.”

4.1 It is the case of the applicant that the arbitration clause envisages appointment of a named arbitrator [i.e. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL)] who is stated to have a direct relationship with the respondent, rendering such appointment impermissible in law.

4.2 Therefore, applicant served notices dated 21.09.2025 and 25.09.2025 upon respondent seeking resolution of dispute through Arbitration proposing three names for appointment as Sole Arbitrator, however, respondent declined the said suggestions and instead proposed three alternate names, but no consensus could be arrived at between the parties.

4.3 It is averred that prior to invocation of arbitration, the parties attempted to resolve the disputes through amicable settlement by appointing

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Empowered Officer, as contemplated under the said agreements under Clause 55; however, the said efforts did not culminate in any settlement.

5. Learned counsel for the State of Haryana could not dispute, execution of arbitration agreement, exhaustion of remedy by applicant under the arbitration clause in the agreements between rival parties, service of notice, dispute between the parties being arbitrable and the cause not being a deadwood.

6. 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** (para 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*

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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 the case of ***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?

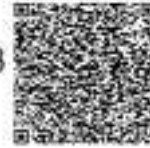
Or

244.5.2 -----

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?”

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7. 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.”

8. 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.”

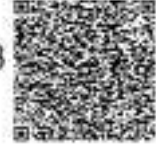
9. The applicant, therefore, invoked jurisdiction of this Court under Section 11(6) of the 1996 Act seeking appointment of Sole arbitrator.

10. This Court, to ensure fairness, deems it appropriate to appoint an independent arbitrator and pre-requisites for invoking power u/s 11 (6) of 1996 Act appear to be satisfied.

11. Accordingly, this application is allowed.

11.1 Mr. Justice Ajay Rastogi, Former Judge of Supreme Court of India, residing at A-6, First Floor, Anand Niketan, NewDelhi-110021 And

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HouseNo.69, Sector 10A, Chandigarh, Mobile No. 9210906290 is hereby appointed as Sole Arbitrator to adjudicate the dispute 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 ruling on any objections with respect to the existence or validity of the arbitration agreements and the scope of the Arbitrator's authority in accordance with Section 16 of the 1996 Act.

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 Ajay Rastogi, Former Judge of Supreme Court of India.

(SHEEL NAGU)
CHIEF JUSTICE

13.02.2026

Kamal Gandhi

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

KAMAL GANDHI
2026.02.24 16:54
I attest to the accuracy and
integrity of this document