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

ARB-708-2025

Date of decision: 20.01.2026

NAWAB SINGH

...Applicant(s)

VERSUS

**EXECUTIVE ENGINEER-VI, (PH) CHANDIGARH HOUSING BOARD
AND ANOTHER**

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

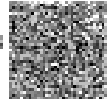
Present:- Mr. Vishal Garg Narwana, Advocate
for the applicant.

Mr. Deepak Malhotra, Additional Standing Counsel
for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

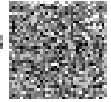
1. The present application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') read with Section 151 of CPC, seeking appointment of an independent Arbitrator to adjudicate the disputes and differences which have arisen between the parties.

2. Learned counsel for the applicant submitted that an e-tender was floated by the respondents on behalf of Chandigarh Housing Board for running and maintenance of some public toilets and the applicant participated in the bid and was selected as the successful bidder. The said tender was allotted to the applicant vide allotment letter dated 18.03.2021 and pursuant to the same, an agreement was entered into between the parties on 09.04.2021. He submitted



that a dispute has arisen between the parties pertaining to some payment, regarding which there is an arbitration clause i.e. Clause 18 of the special conditions and other related documents for submission of financial bid, which has been attached along with the present arbitration case as Annexure A-1. He further submitted that as per the aforesaid arbitration clause, the disputes if any, arising during the period of the agreement between CHB and the agency shall be referred to the sole arbitration of the Chairman CHB or a person nominated by him. He further submitted that considering the provisions of Section 12(5) of the Act and the law laid down by Hon'ble Supreme Court in various judgments, the aforesaid person cannot be appointed as an Arbitrator as he is an interested person and there would be a conflict of interest and therefore, any other independent Sole Arbitrator may be appointed by this Court. He also submitted that since a dispute has arisen between the parties, the applicant invoked the arbitration clause vide Annexure A-2 dated 04.06.2025 by sending a notice to the respondents proposing the names of three Arbitrators, out of which any one Arbitrator may be appointed by the respondents but no response was received from the respondents and therefore, the present application has been filed seeking appointment of an independent Arbitrator.

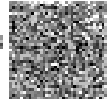
3. On the other hand, Mr. Deepak Malhotra, Additional Standing Counsel for the respondents submitted that there is no dispute with regard to the existence of the aforesaid Clause 18 of the special conditions and other related documents for submission of financial bid but the aforesaid document is not an agreement between the parties. He submitted that the agreement containing the arbitration clause i.e. Clause 25 is at page No.159 of the paper-book, which also



provides for arbitration but it is so provided under the aforesaid Clause 25 that first of all the applicant is to raise the dispute before the Engineer-in-Charge and each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration. Thereafter, Clause 25(ii) provides that dispute or difference shall be referred for adjudication through arbitration by a Tribunal having Sole Arbitrator where claimed amount is Rs.20 crore or less. He further submitted that although the claimed amount is less than Rs.20 crore but a Sole Arbitrator can be appointed only after raising the claims/disputes before the Engineer-in-Charge and the applicant has not adopted the aforesaid pre-arbitral mechanism in this regard and therefore on this ground, the present arbitration case is liable to be dismissed.

4. While responding to the argument raised by the learned counsel for the respondents, learned counsel for the applicant submitted that the argument raised by learned counsel for the respondents is misconceived in view of the fact that even the agreement referred to by the learned counsel for the respondents provides that the original bid document of the Contractor will also form a part of the terms and conditions of the agreement as mentioned at page No.262 of the paper-book, which is the concluding page of the agreement. Therefore, the fact that whether any pre-arbitral mechanism was adopted or not will not make a difference because the bid document as relied upon by the learned counsel for the respondents as well as the aforesaid clause does not provide for pre-arbitral mechanism and in view of the same, the argument raised by the learned counsel for the respondents is misconceived.

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

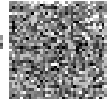


6. The arbitration clause referred to by the learned counsel for the applicant contained in the special conditions and other related documents for submission of financial bid at Clause 18, is reproduced as under:-

“18. Disputes if any, arising during the period of this agreement between CHB and the agency shall be referred to the sole arbitration of the Chairman CHB or a person nominated by him (The fact that the person so nominated is also an employee of CHB shall not be a bar on his acting as an Arbitrator nor shall any of the parties have any objection to his nomination for the said reason). The decision of the Sole Arbitrator so appointed shall be final and binding on both the parties. The venue of Arbitration shall be at Chandigarh. All disputes are subject to Chandigarh Jurisdiction only.”

7. The relevant portion of Clause 25 at page No.159 of the paper-book, referred to by the learned counsel for the respondents and forming part of the agreement, is also reproduced as under:-

“25(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge or if the Engineer in Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the Chief Engineer/CPM, or where there is no Chief Engineer/CPM, request the Additional Director General/Special Director General, who shall refer the disputes to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed, if

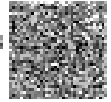


any in respect of each such dispute. The Dispute Redressal Committee (DRC) give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE/CPM/ADG/SDG. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.

The DRC will submit its decision to the concerned ADG/SDG for acceptance. ADG/SDG in a time limit of 30 days from receipt of DRC decision will convey acceptance or other wise on the said decision. If the Dispute Redressal Committee (DRC) fails to give its decision within the aforesaid period or the ADG/SDG fails to give his decision in the aforesaid time limit or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC)/ADG/SDG the neither party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC)/ADG/SDG or on expiry of aforesaid the time limits available to DRC/ADG/SDG may give notice to the Chief Engineer/CPM, CPWD, in charge of the work or if there be no Chief Engineer/CPM, the Additional Director General/Special Director General concerned or if there be no Additional Director General/Special Director General, the Director General, CPWD for appointment of arbitrator on prescribed proforma as per Appendix XVII under intimation to the other party.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

The CE/ADG/SDG shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be



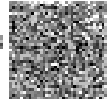
within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-charge to CE/ADG/SDG/DG for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of

- (a) A party fails to appoint the second Arbitrator, or*
- (b) The two appointed Arbitrators fail to appoint the Presiding Arbitrator, then the Director General, CPWD shall appoint the second or Presiding Arbitrator as the case may be.*

25(ii) *Dispute or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where claimed amount is Rs. 20 Crore or less. Where claimed Value is more than Rs. 20 Crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall be applicable.*

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the decision of the ADG/SDG on the finding recommendation of DRC.

It is also a term of this contract that member(s) of the Arbitration Tribunal, shall be a Graduate Engineer with experience in handling public works engineering contracts,



and further he shall have earlier worked at a level not lower than Chief Engineer/equivalent (i.e. Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator.

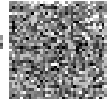
Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast track arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without any requirement of reference by the appointing authority. The arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs.1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that fees payable to arbitral tribunal shall be as approved by DG, CPWD, OM issued vide no.2/2006/SE(TLC)/CSO/137 dated 19-11-2019 (or its latest amendment as approved by DG, CPWD.). This fee shall be shared equally by parties.

The place of arbitration shall be as mentioned in Schedule F. In case there is no mention of place of arbitration, the arbitral tribunal shall determine the place of arbitration.

The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.”

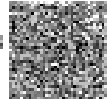


8. The concluding part of the agreement at page No.262 of the paper-book is also reproduced as under:-

“2. That the contractor shall abide by the fulfill all the terms & conditions of this agreement including those Schedule-I (Page 1 to 116) original bid documents consisting notice inviting tender, documents relating to eligibility criteria special conditions, other financial bid related documents and general/Special condition, specification, schedule quantity, Schedule-II (Page 117 to 142 comprising of Original Bid Document of the Contractor, its undertaking & acceptance by competent authority i.e. of CM, CHB & approval), Schedule-III (Page 143 to 349 comprising of acceptance of tender, award of work & agreement), annexed hereto and in default thereof, he (contractor) as laid down in this Agreement comprising of 'Bid Document and Financial Bid' annexed hereto.”

9. A collective reading of the aforesaid would show that there exists an arbitration clause in both the special conditions and other related documents for submission of financial bid, which is an original bid document and also in the agreement between the parties and therefore, there is no dispute with regard to the existence of an arbitration clause, which provides that in case a dispute arises between the parties then the same shall be referred to the Sole Arbitrator. It is also not in dispute that notice invoking the arbitration clause vide Annexure A-2 has been issued.

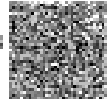
10. The objection raised by the learned counsel for the respondents was with regard to non-adherence to the pre-arbitral mechanism since the applicant has not raised his grievances/claims/disputes before the Engineer-in-Charge. The argument raised by the learned counsel for the respondents can be



dealt with in two aspects. Firstly, as to whether the aforesaid Clause 18 itself can be enforced and an Arbitrator can be appointed and secondly, what is the effect of non-adherence to the pre-arbitral mechanism, if any.

11. So far as the first aspect is concerned, the aforesaid Clause 18, to which the learned counsel for the applicant has referred, does not provide for any pre-arbitral mechanism and straightaway, it so provides that disputes if any, shall be referred to the sole arbitration of the Chairman of the Chandigarh Housing Board, which otherwise is not permissible. These special conditions of contract, which are in the nature of a bid document find mention at paragraph No.2 of the last page of the agreement, as reproduced above, and provide that the Contractor shall abide by and fulfill all the terms and conditions of various documents which includes the original bid document of the Contractor and therefore, the original bid document becomes part of the agreement. So far as Clause 25, which was referred to by learned counsel for the respondents is concerned, it also provides for an arbitration clause but with a pre-arbitral mechanism and therefore, this Court is of the considered view that it will not make a difference as to whether any pre-arbitral mechanism was adhered to by the applicant or not.

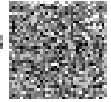
12. So far as the second aspect pertaining to the scope of Section 11 of the Act in cases where the pre-arbitral mechanism has not been adhered to and effect of the same is concerned, reference can be made to the judgments passed by Hon'ble Supreme Court in **Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, in Re, (2024) 6 SCC 1** and **SBI General Insurance Co. Ltd. versus Krish Spinning, 2024 SCC**



OnLine SC 1754, wherein Hon'ble Supreme Court 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 the 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 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.

13. The 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, (2024) 6 SCC 1** observed that at the stage of reference under Section 11 of the Act, the Court is only to see *prima facie* existence of the arbitration clause and invocation thereof. Relevant portion of the aforesaid judgment is reproduced as under:-

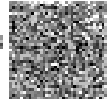
“120. In view of the above discussion, we formulate our conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the substantive independence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

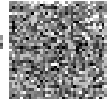


of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and 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.”

14. The relevant portion of the judgment passed by 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



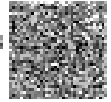
formal validity such as the requirement that the agreement should be in writing.

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***



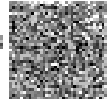
proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a time bound process, 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



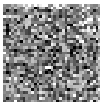
jurisdiction of the arbitral tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the arbitral tribunal, should not be looked into by the referral court, even for a prima facie determination, before the arbitral tribunal first has had the opportunity of looking into it.”

15. Delhi High Court in **Jhajharia Nirman Ltd. versus South Western Railways, 2024 SCC Online Del 7133** while dealing with the issue of pre-arbitral mechanism also observed that any pre-condition in an arbitration agreement obliging one of the contracting parties to either exhaust the pre-arbitral amicable resolution avenues or to take recourse to Conciliation are directory and not mandatory.

16. In this way, all the essential conditions for appointment of a Sole Arbitrator under Section 11 of the Act stand satisfied in the present case.

17. In view of the above, this Court is therefore of the considered view that there is no impediment to the appointment of a Sole Arbitrator in view of the *prima facie* existence of the arbitration clause, which has been invoked by the applicant by issuance of notice as aforesaid.

18. Consequently, the present application is allowed. Mr. Justice Pramjeet Singh Dhaliwal, a former Judge of this Court, resident of House No.2254, Sector 35-C, Chandigarh, mobile Nos.-7837049204, 9814115825, e-mail ID-dhaliwalps@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.



19. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed and communicated by the learned Arbitrator at his convenience.
20. Fee shall be paid to the learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.
21. Learned Arbitrator is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Act.
22. A request letter alongwith a copy of the order be sent to Mr. Justice Pramjeet Singh Dhaliwal, a former Judge of this Court.

(JASGURPREET SINGH PURI)
JUDGE

20.01.2026
Chetan Thakur

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