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

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ARB-721-2025 (O&M)
Date of Decision:08.05.2026

M/s Bhagwat Engineers and Contractors

.....Petitioner

Versus

Department of Local Government and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Sukhvinder Singh, Advocate for the petitioner.

Ms. Shruti, AAG, Punjab.

Mr. Balram Singh, Advocate for respondent No.2.

JASGURPREET SINGH PURI J.(Oral)

1. The present is a petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeking appointment of an independent arbitrator in the present case.

2. Learned counsel for the petitioner submitted that there exists an agreement (Annexure A-1) between the petitioner and respondent—Municipal Corporation, Jalandhar, which contains an arbitration clause, namely Clause 25, providing that in the event of any dispute, where the value of the original contract is up to Rs.5 crores, the same shall be referred to the sole arbitration of the Superintending Engineer of the concerned



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Circle of the Public Works Department, Buildings and Roads Branch. He submitted that the value of the contract in the present case is less than Rs.5 crores. He further submitted that since disputes arose between the parties, the petitioner invoked the aforesaid clause by issuing a notice to the respondent-Corporation vide Annexure P-6 dated 20.03.2025 but no response has been received from the respondent-Corporation. Therefore, he submitted that this Hon'ble Court may appoint an independent and impartial arbitrator for adjudicating the dispute.

3. On the other hand, learned counsel appearing on behalf of respondent No.2-M.C. submitted that there is no dispute with regard to the existence of the agreement, the arbitration clause contained therein, or the service of notice upon the respondents. However, the objection of respondent No.2-Municipal Corporation is that there is no need to appoint any arbitrator because the amount has already been paid to the petitioner according to the work executed by it and therefore, it has no cause of action for invoking the arbitration clause, as nothing remains outstanding against the respondent-Corporation.

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

5. The agreement between the parties, the existence of the aforesaid arbitration clause, as well as the notice invoking the arbitration clause, are not disputed by learned counsel for respondent No.2. The only objection raised by learned counsel for respondent No.2 is that there is no need to refer the matter to arbitration, as no amount remains due to the



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petitioner from respondent-Corporation because whatever work was executed by the petitioner, the amount payable therefore has already been paid. This Court is of the considered view that the aforesaid objection raised by learned counsel for respondent No.2 is unsustainable in view of the settled position of law that at the stage of reference under Section 11 of the Act, the referral Court is only required to examine the *prima facie* existence of an arbitration clause and its invocation thereof by issuance of notice. The Court at the reference stage under Section 11 of the Act is not required to conduct a mini trial and has only to see the existence of the aforesaid two conditions-nothing more, nothing less. The Hon'ble Supreme Court in “**SBI General Insurance Company Limited Vs. Krish Spinning**”, **2024 SCC Online SC 1754** 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 and therefore, the law is no longer *res integra*. *The relevant portion of the aforesaid judgment of Hon'ble Supreme Court passed 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.”

6. The relevant paragraphs of the aforesaid judgment passed in



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Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re Case (Supra) are 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



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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



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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.”

7. Considering the law laid down by the Hon’ble Supreme Court,



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this Court is of the considered view that since an arbitration clause exists between the parties and the same has been duly invoked by the petitioner by issuance of notice, both the conditions which are *sine qua non* for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 stand satisfied.

8. Consequently, the present petition is allowed. Hon'ble Mr. Justice Pramjeet Singh Dhaliwal (Retired), resident of House No.2254, Sector 35-C, Chandigarh, Mobile No.7837049204, 9814115825, Email: 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.

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

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

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

12. A request letter alongwith a copy of the order be sent to Hon'ble Mr. Justice Pramjeet Singh Dhaliwal (Retired).

08.05.2026
shweta

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No