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

**ARB-750-2025 (O&M)
Date of Decision: 16.03.2026**

Onkarjit Kaur

.... Applicant

Versus

Union Territory, Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rajesh Kumar Girdhar, Advocate
for the applicant.

Mr. Pritpal Singh Nijjar, Additional Standing Counsel with
Mr. Himanshu Malik, Advocate,
for the respondent-U.T., Chandigarh.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present application has been filed under Section 11 read with Section 12 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') praying for appointment of an independent Sole Arbitrator to adjudicate upon the disputes and differences, which have arisen between the parties.

2. Learned counsel for the applicant submitted that a Contract was executed between the applicant and the respondents (Annexure P-1) vide which the applicant was appointed as Auxiliary Nursing Midwife (ANM) and it was signed by both the parties. The said Contract contains a valid arbitration clause i.e. Clause 35, which provides that all disputes shall be decided by the Sole Arbitrator i.e. the Mission Director, State Health Society, U.T., Chandigarh (who is respondent No.3 in the present case) and his decision shall be final and binding upon both the parties. He submitted

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that since a dispute arose between the parties and the petitioner was terminated from service, the petitioner invoked the aforesaid arbitration clause by issuance of a notice dated 22.03.2025 under Section 21 of the Act to the respondents (Annexure A-9) wherein it was specifically stated that the Mission Director, State Health Society, U.T., Chandigarh cannot act as an independent Arbitrator in view of the amended provisions of the Act and therefore, requested that the dispute be referred to any other Arbitrator within 30 days. Thereafter, the respondents filed reply to the aforesaid notice vide Annexure P-10 dated 25.04.2025 stating that the Mission Director, State Health Society, U.T., Chandigarh is the Sole Arbitrator and her decision on the petitioner's request to allow her to join back has already been communicated to her and in this way, the respondents did not agree to appoint any other Sole Arbitrator. Therefore, the present application has been filed under Section 11 of the Act for appointment of an independent Sole Arbitrator.

3. On the other hand, Mr. Pritpal Singh Nijjar, learned counsel for the respondents-U.T., Chandigarh has submitted that the aforesaid Clause 35 does not provide for an arbitration clause and therefore, the present application under Section 11 of the Act is not maintainable. He further submitted that in addition to the aforesaid Clause 35, there is also Clause 36, which provides that the Civil Courts at Chandigarh alone shall have jurisdiction in case any party decides to go to a Civil Court in any manner touching this Agreement. He also referred to another order passed by respondent No.3-Mission Director, State Health Society, U.T., Chandigarh (Annexure A-6), whereby the request of the petitioner to rejoin her duties was rejected. Further reference was made to an order dated 25.02.2025



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(Annexure A-8) whereby it was observed by the Secretary (Health), Chandigarh Administration that as per Clause 35, the Mission Director, State Health Society, U.T., Chandigarh is the Sole Arbitrator and in this case Clause 36 of the Contract is applicable and liberty was granted to the applicant to approach the Court of law and therefore, the present application is not maintainable.

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

5. The Contract (Annexure P-1) executed between the parties has not been disputed by the respondents. The invocation of the aforesaid arbitration Clause i.e. Clause 35 of the Contract (Annexure P-1) by issuance of a notice under Section 21 of the Act vide Annexure A-9 has also not been disputed. The relevant clauses i.e. Clauses 35 & 36 contained in the Contract are reproduced as under:-

“35. THAT all disputes, if any, shall be decided by the sole arbitration by the Mission Director, State Health Society, U.T. Chandigarh and his decision shall be final and binding upon both the parties.

36. That Civil Courts at Chandigarh alone shall have jurisdiction in case any party decides to go to a Civil Court in any manner touching this agreement”

6. A perusal of the aforesaid Clause 35 reveals that it so specifically provides that all disputes, if any, shall be decided by the sole arbitration by the Mission Director, State Health Society, U.T., Chandigarh, who is respondent No.3 in the present case. With regard to jurisdiction of civil court, it is so provided that the same shall vest exclusively with the Civil Courts, Chandigarh. Learned counsel for the respondents has raised an objection that Clause 36 will apply in the present case and Clause 35 will not apply. The aforesaid argument raised by learned counsel for the respondents



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is not sustainable. Once the aforesaid Clause 35 clearly provides in unambiguous terms, for the appointment of a Sole Arbitrator, therefore, the intention of the parties to refer any dispute to the Sole Arbitrator is evident. Although, the Mission Director, State Health Society, U.T., Chandigarh has been nominated as the Sole Arbitrator but he cannot be appointed as such, being interested party and this is impermissible under the law in view of the amendment of the Act which was carried out in the year 2015 whereby Section 12(5) of the Act was added as well as the law settled by Hon'ble Supreme Court in "*Perkins Eastman Architects DPC Vs. HSCC (India) Ltd.*", **2020(20) SCC 760**.

7. The mere fact that there is another clause i.e. Clause 36 as reproduced above, which provides for jurisdiction of the Courts at Chandigarh does not mean that there is no arbitration clause. This argument raised by learned counsel for the respondents is totally misconceived. Not only this, vide Annexure A-8, when the Secretary (Health), Chandigarh Administration passed an order, he specifically referred to the aforesaid Clause 35 and after reproducing the said Clause, stated that he is of the opinion that as per the aforesaid Clause 35, the Mission Director, State Health Society, U.T., Chandigarh is the Sole Arbitrator. The relevant portion of the aforesaid order (Annexure A-8) is also reproduced as under:-

"WHEREAS, in view of the condition 10 of the appointment letter of Ms. Onkarjit Kaur, ANM, undersigned called Ms. Onkarjit Kaur for personal appearance on 13.02.2025.

WHEREAS, Clauses 35 and 36 of last Service Contract dated 14.08.2024 entered between Ms. Onkarjit Kaur and MD-NHM, UT Chandigarh, provide as under:-

"35. THAT all disputes, if any, shall be decided by



the sole arbitration by the Mission Director, State Health Society, U.T. Chandigarh and his decision shall be final and binding upon both the parties.

36. That Civil Courts at Chandigarh alone shall have jurisdiction in case any party decides to go to a Civil Court in any manner touching this agreement."

NOW THEREFORE, undersigned is of the opinion that as per clause 35 ibid, MD-NHM, UT Chandigarh is the sole arbitrator in this case, hence, clause 36 of the contract is applicable in this case. Matter is disposed off accordingly.

The appellant is at liberty to approach the Court of law."

8. In this way, the existence of an arbitration clause and provision for appointment of Sole Arbitrator thereto has been clarified by the Secretary (Health), Chandigarh Administration. However, the order passed by the Secretary (Health) Chandigarh Administration erroneously holds that since the Mission Director, State Health Society, U.T., Chandigarh is the designated Sole Arbitrator, the applicant has liberty to approach the Court of law whereas in fact, the Secretary (Health), Chandigarh Administration ought to have given effect to the arbitration clause by mutually appointing some other Arbitrator after taking the petitioner's consent as the appointment of the Mission Director, State Health Society, U.T., Chandigarh as the Sole Arbitrator, being interested party, is impermissible in view of the provisions of Section 12(5) of the Act. It is thus very clear that there exists an arbitration clause and the same has been invoked but the mechanism has failed.

9. The law with regard to the scope and extent of examination by the referral Court at the stage of Section 11 of the Act is no longer *res*



integra. 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 in “**SBI General Insurance Company Limited Vs. Krish Spinning**”, 2024 SCC Online SC 1754 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 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 and 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. 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 non-existent 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.”

10. The relevant paragraphs of the aforesaid judgment passed in ***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 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.”

11. It is therefore clear that the High Court while exercising the powers under Section 11 of the Act is not to hold a mini-trial with regard to the aforesaid facts which have been disputed by the learned counsel for the respondents. At the time of reference stage under Section 11 of the Act, the High Court only has to see *prima facie* existence of an arbitration clause and invocation thereof under Section 21 of the Act.

12. In the present case, both the ingredients i.e. *prima facie* existence of the arbitration clause in the agreement (Annexure P-1) and invocation thereof remain satisfied.

13. Consequently, the present application is allowed. Mr. Gurdeepinder Singh Dhillon, Advocate, resident of House No.1, Main Road, Nawa Gaon (Near Hotel Blue Moon), SAS Nagar, Punjab-160103, Mobile No.9814002884, Email ID: gsdhillonadvocate@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.

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

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

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



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Act.

17. A request letter alongwith a copy of the order be sent to Mr. Gurdeepinder Singh Dhillon, Advocate.

16.03.2026

(JASGURPREET SINGH PURI)
JUDGE

Bhumika

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |