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ARB-766 of 2025

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

**ARB-766 of 2025
Date of decision: 27.03.2026**

AHLUWALIA CONTRACTS INDIA LIMITED

....Petitioner

Versus

ADVANCE INDIA PROJECTS LIMITED

....Respondent

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

Present: Mr. Shekhar Verma, Advocate (Arguing Counsel)
Mr. Mritunjay Kr. Singh, Advocate and
Mr. Rahul Chadha, Advocate for the applicants.
Mr. Sandeep Verma, Advocate for the respondent
(through V.C.)

SHEEL NAGU, CHIEF JUSTICE (Oral)

1. Instant application u/s 11 (6) of Arbitration and Conciliation Act, 1996 (for short, '1996 Act'), seeks appointment of Arbitrator/Arbitrators.
2. No reply filed on behalf of the respondent.
3. The rival parties herein entered into agreement dated 09.07.2018 (executed on 28.07.2018) (**Annexure A-1**) containing an arbitration clause as follows :

“25. Resolution of disputes.

All unresolved dispute(s) in respect of any decision of the Project manager shall be referred to and resolved by sole arbitration. Such arbitrations shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 and shall be acceptable to both the parties. The venue of arbitration shall be New Delhi.

Special Conditions of Contract

31 RESOLUTION OF DISPUTES:

31.1 Negotiation and Conciliation

The Parties shall use their respective reasonable endeavors to settle any dispute, difference claim, question or controversy

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between the Parties arising out of, in connection with or in relation to this Agreement ("Dispute") amicably between them through negotiation.

31.2 Reference to Arbitrator

Any Dispute which the Parties are unable to resolve pursuant to Clause 31.1 within sixty (60) days (or such longer period as the Parties may agree) of the written notification by one Party to the other of the existence of a Dispute shall be finally determined by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996 by the sole arbitrator who shall be either the Managing Director of OWNER or his nominee.

31.3 Miscellaneous

The venue of arbitration shall be Delhi. Each Party shall pay the expenses of the arbitration in accordance with the Rules and the eventual liability for the costs shall be in terms of the arbitral award. No arbitrator shall be the present or former employee or agent of, or consultant or counsel to either Party or in any way related or closely connected with the Parties. The language of the arbitration shall be English.

31.4 Decision / Award

Any decision or award of an arbitral tribunal appointed pursuant to this Clause 31.2 shall be final and binding upon the Parties. The Parties agree that any arbitration award made may be enforced by the Parties against assets of commensurate value of the relevant Party, wherever those assets are located or may be found, and judgment upon any arbitration award (wherever necessary) may be entered by any court of competent jurisdiction thereof. The Parties expressly submit to the jurisdiction of any such court for the purposes of enforcement of any arbitration award.

31.5 Continuation of performance

Pending final resolution of any Dispute, the Parties shall continue to perform their respective obligations hereunder.

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31.6 Survival

It is expressly stated herein that the provisions of this Clause 33 shall survive termination or expiry of this Contract.”

3.1 Dispute erupted between the parties. The applicant served notice dated 02.06.2025 (**Annexure A-3**) under Section 21 of the 1996 Act upon respondent and invoked Arbitration Clause No. 31 mentioned in the Special Conditions of Contract. In response, vide letter dated 12.06.2025 received through email dated 24.06.2025 (**Annexure A-4**), respondent raised its own counter claims. Thereafter, the Applicant issued a further response dated 16.07.2025 (**Annexure A-5**) and reiterated its claims and denied the counter claims raised by the Respondent with a request for constitution of the Arbitral Tribunal comprising of a Sole Arbitrator. Therefore, in pursuance to no response, Applicant approached this Court.

3.2 A plain reading of Clause 31 mentioned in the Special Conditions of Contract as reproduced hereinabove, wherein the disputes were to be referred to the Managing Director of Owner or his nominee makes it evident that the said provision is in direct contravention of Section 12(5) read with the Seventh Schedule of 1996 Act, and consequently, in light of the settled legal position, an independent and impartial Arbitrator is required.

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

5. 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,**

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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 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, 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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6. 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.”

7. 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.”

8. Pre-requisites for invoking power u/s 11 (6) of 1996 Act appear to be satisfied.

9. Accordingly, this application is allowed.

9.1 Mr. Justice M.M. Kumar, former Chief Justice, Jammu & Kashmir High Court, residing at House No.79, Sector16-A, Chandigarh, 2nd Address: C-

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appointed as Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements under 1996 Act before proceeding ahead.

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

11. The Arbitrator is appointed with the liberty to determine jurisdiction and rule on any objections including (but not limited to) ruling on objections with respect to the existence or validity of the arbitration agreement and the scope of the Arbitrator's authority in accordance with Section 16 of the 1996 Act.

12. 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.

13. The Arbitrator is requested to complete the arbitral proceedings as per time limit stipulated u/s 29-A of 1996 Act.

14. Any observation made hereinabove is meant merely for passing this order and shall not be construed as expression on merits of the dispute.

15. A request letter along with copy of this order be sent to Mr. Justice M.M. Kumar, former Chief Justice, Jammu & Kashmir High Court.

(SHEEL NAGU)
CHIEF JUSTICE

27.03.2026

Kamal Gandhi

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