



267

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

ARB-778-2025(O&amp;M)

Date of Decision: 02.04.2026

**M/S D2B ENTERPRISES LLP**

....Petitioner(s)

Versus

**MADAN LAL JAIN AND OTHERS**

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Amit Jhanji, Senior Advocate with  
Mr. Sanjay Vij, Advocate,  
Mr. Shashank Shekhar Sharma, Advocate,  
Mr. Uday Vij, Advocate, for the petitioner.

Mr. Shubail Farook, Advocate and  
Mr. Himanshu Kashyap, Advocate,  
for the respondents.

\*\*\*\*

**JASGURPREET SINGH PURI, J. (Oral)**

1. Reply filed by the respondents is taken on record.
2. The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of a Sole Arbitrator.
3. Learned Senior Counsel appearing on behalf of the petitioner submitted that there is a collaboration agreement between the petitioner and the respondents. The petitioner is the builder and the respondents are the landowners and the collaboration agreement has been attached with the present petition as Annexure P-1 dated 04.01.2024. He submitted that in the aforesaid agreement, there is an arbitration clause i.e Clause 42, which



provides that if the dispute is not resolved through mutual discussions and amicably, then the matter will be finally settled through arbitration by a Sole Arbitrator to be appointed on a consensual basis by the parties. He further submitted that the petitioner tried its level best to settle the dispute amicably and in this regard, he referred to Annexure P-4, which is a notice issued by the petitioner dated 05.08.2025 for discussion and amicable settlement but the same failed. It was thereafter that vide Annexure P-9 dated 18.09.2025, a notice was issued to the respondents invoking the aforesaid arbitration clause and the name of an Arbitrator was also proposed and in response to the said notice invoking the aforesaid arbitration clause, a reply was received from the respondents vide Annexure P-10, wherein the respondents have denied the appointment of an Arbitrator on the ground that the agreement has been terminated and therefore, no Arbitrator can be appointed. Learned Senior Counsel submitted that it was because of this failure of the mechanism for appointment of an Arbitrator that the present petition has been filed under Section 11 of the Act for appointment of an independent Sole Arbitrator by this Court.

3. On the other hand, Mr. Shubail Farook, Advocate appearing on behalf of the respondents submitted that so far as the agreement (Annexure P-1) which contains the arbitration clause is concerned, there is no dispute with regard to the same. He further submitted that the notice issued by the petitioner vide Annexure P-9 invoking the arbitration clause and the reply given by the respondents thereof are also not in dispute. He submitted however the objection of the respondents is that the agreement itself has been terminated and the petitioner, who is a developer, had itself violated the terms and conditions of the contract. He also submitted that once the



petitioner has violated the terms and conditions, then it could not have filed the present petition under Section 11 of the Act. He further submitted that as per Clause 20 of the agreement, it has been provided that in case the owners or their nominee or legal heirs cancel or back out from the agreement, then in that event, the developer without prejudice to its other rights will be entitled to get the agreement enforced through courts of law and therefore, the present petition under Section 11 of the Act is not maintainable.

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

5. The agreement between the parties, which is in the nature of collaboration agreement (Annexure P-1) is not in dispute. The invocation of the arbitration clause, which is contained in the aforesaid collaboration is also not in dispute. However, two-fold objections were raised by the learned counsel for the respondents. Firstly, the petitioner itself has violated the terms and conditions of the contract and the agreement has already been terminated and secondly, as per Clause 20, the remedy lies before the courts and not before the Arbitral Tribunal.

6. So far as the first objection raised by learned counsel for the respondents is concerned, the same is not sustainable in view of the fact that at the reference stage under Section 11 of the Act, the Court is not to hold a mini trial as to whether any of the terms and conditions of the contract have been violated or not. The Court at the reference stage is only to satisfy itself to the extent of *prima facie* existence of an arbitration clause and the invocation thereof by issuance of a notice. In the present case, learned counsel for the respondents has not disputed existence of the agreement containing the arbitration clause and also its invocation thereof. The Court



at the reference stage under Section 11 of the Act would not go into all these aspects as to who committed the breach of contract and is only to see the fulfillment of the aforesaid two essential conditions, nothing more, nothing less. The reference in this regard may be made to the law laid by the Hon'ble Supreme Court in **SBI General Insurance Co. Ltd. versus Krish Spinning, 2024 SCC OnLine SC 1754** and also in **Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re, (2024) 6 SCC 1**. The relevant portion of the aforesaid judgment of 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 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.”*

7. The relevant portion of the judgment of Hon'ble Supreme Court in **Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re Case (Supra)** is 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.*

xxx-xxx-xxx-xxx

*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.”*





8. In view of the settled proposition of law, the aforesaid objection which has been raised by the learned counsel for the respondents is not sustainable and is accordingly rejected.

9. So far as the second objection raised by learned counsel for the respondents is concerned, he referred to Clause 20 of the agreement, which provides that in case the owners or their nominees or legal heirs cancel or back out from the agreement, then in that event, the developer without prejudice to its other rights will be entitled to get the agreement enforced through court of law. The said argument is also not tenable or sustainable in view of the presence of the arbitration clause i.e. Clause 42, which has been reproduced hereinunder:-

*“42. This agreement shall be governed and interpreted by and construed in accordance with the laws of India. The courts at Ludhiana and Hon'ble Punjab and Haryana High Court shall have exclusive jurisdiction in all matters arising out of and or concerning the transaction under this Collaboration Agreement.*

*In case of any dispute, controversy or claim arising out of or in connection with this Collaboration Agreement including any question regarding its existence, validity, interpretation, breach or termination, between the Parties then same shall be attempted to first resolve through discussions between the Parties.*

*If the dispute is not resolved through such discussions within 30 day business days after one disputing Party has served a written notice on the other disputing Party requesting the commencement of discussions, such dispute shall be finally settled through arbitration by a sole arbitrator to be appointed on a consensual basis by the Parties. In case the Parties fail to arrive at the consensus referred to above, the appointment shall be*



*made in accordance with the provisions of the Arbitration and Conciliation Act 1996 or any statutory amendments/ modifications thereto for the time being in force. The arbitration proceedings shall be held at Ludhiana and the language of arbitration proceedings shall be English. The decision of the arbitrator shall be final and binding on the parties”*

10. Once admittedly there exists an arbitration clause in the agreement, which is not disputed by the learned counsel for the respondents, then the aforesaid argument raised by the learned counsel for the respondents would not be tenable and this Court in exercise of its powers under Section 11 of the Act is only required to see the *prima facie* existence of the arbitration clause and its invocation thereof in view of the settled law.

11. Consequently, the present petition is allowed. Hon'ble Mrs. Justice Meenakshi I Mehta, a former Judge of this Court, resident of House No. 358, Sector-2, MDC, Panchkula (Haryana), Mobile No. 9416877277, E-mail ID: mimehta1964@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.

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

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

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



15.                      A request letter alongwith a copy of the order be sent to  
  
Hon’ble Mrs. Justice Meenakshi I Mehta, a former Judge of this Court.

|                    |                                 |
|--------------------|---------------------------------|
| <b>02.04.2026</b>  | <b>(JASGURPREET SINGH PURI)</b> |
| <i>rakesh</i>      | <b>JUDGE</b>                    |
| Whether speaking   | :                      Yes/No   |
| Whether reportable | :                      Yes/No   |