

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Arbitration Application No. 26 of 2024

M/s Prizm Holography and Security Films Pvt. Ltd. (a private company duly incorporated And registered under the Companies Act, 2013) Through its Authorized Representative Mrs. Rupali Gupta aged about 45 years W/o Vidhu Gupta, Resident of -3601, Vrinda City, Sector-P.H.-14, Greater Noida, P.O.-Knowledge Park, P.S.-Kasna, District-Gautam Budha Nagar, Uttar Pradesh, Having its registered office at A-14, Basement, Gali No. 20, Madhu Vihar, Laxmi Nagar, P.O. & P.S.-Laxmi Nagar, New Delhi (East)-110092.

... Petitioner/Applicant

Versus

1. State of Jharkhand Through its Deputy Commissioner, Department of Excise and Prohibition, Utpad Bhawan, New Police Line, Kanke Road, P.O. & P.S.-Gonda, Ranchi-834008

..... Respondent No. 1

2. Jharkhand State Beverage Corporation Limited (a wholly owned company of Government of Jharkhand Incorporated and registered under the Companies Act, 1956) Through its Managing Director, Having its registered office at Utpad Bhawan, Ground Floor, Near Naveen Police Kendra, Kanke Road, P.O. & P.S.-Gonda, Ranchi-834001

... Respondent No. 2

3. Excise Commissioner, Department of Excise and Prohibition, State of Jharkhand, Utpad Bhawan, New Police Line, Kanke Road, P.O. & P.S.- Gonda, Ranchi-834008

....Respondent No. 3

CORAM: HON'BLE THE CHIEF JUSTICE

For the Petitioner: Mr. Arun Kumar, Advocate
Mr. Amit Kumar Choubey, Advocate
Mr. Aditya Raj, Advocate
For Resp. No. 1 & 3: Mr. Ashok Kumar Yadav, Sr. S.C. –I
For the Resp. No. 2: Mr. Raunak Sahay, Advocate

CORAM: HON'BLE THE CHIEF JUSTICE

20/Dated: 10.04.2026

1. Heard the learned counsel for the parties.
2. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (said Act) seeking appointment of an

Arbitrator in the disputes that have arisen between the applicant and the respondents.

3. The agreement between the applicant and the respondents 1 and 3 has an arbitration clause, which reads as follows:-

“10. Dispute Resolution

All disputes, differences or questions arising out of this Agreement with regard to the failure to meet obligations or breach of any terms thereof by any of the Parties and/or compensation payable under the agreement shall be referred to the Commissioner, Excise who shall act as the Sole Arbitrator, and after hearing the Parties, shall pass a reasoned order, in accordance with the provisions of the Arbitration and Reconciliation Act, 1996.

Subject to the aforesaid, the Courts in Ranchi alone shall have jurisdiction in respect of any matter arising from or related to the present agreement.

The Second Party shall continue to provide services to the First Party and meet its obligations under this Agreement while any dispute is being resolved, till the agreement is in force.”

4. The respondents do not dispute the existence of the arbitration clause. However, the learned counsel for the respondents submitted that the applicant-Company and its Directors are facing a criminal prosecution with respect to the transactions arising out of this agreement for the production and supply of Security Holograms.

They further submit that, in consequence of this criminal prosecution and the applicant's frauds, the ACB has seized all documents from the respondents concerning this agreement and the transactions thereunder. In such circumstances, the learned counsel for the respondents submitted that this application, which refers the parties to arbitration, must be dismissed.

5. The learned counsel for the respondents further submitted that this matter would involve serious issues of fraud, and since criminal proceedings have already been initiated, the disputes so raised would fall in the category of “non-arbitrable disputes”. This, the learned counsel for the respondents submitted, is yet another reason why the present application should be dismissed.
6. Finally, the learned counsel for the respondents submitted that this agreement for the production and supply of Security Holograms has been terminated based on investigations by a committee, which found that the applicant was involved in leaking Security Holograms, which they were supposed to produce and supply to the Excise Department of the Government of Jharkhand. The learned counsel for the respondents, therefore, submitted that since the agreement itself was terminated for such serious breaches, the arbitration agreement therein would no longer survive, and this application should be dismissed.
7. The learned counsel for the respondents relied on **A. Ayyasamy v. A. Paramasivam and Others**, (2016) 10 SCC 386 and **Rajia Begum v. Barnali Mukherjee**, 2026 SCC OnLine SC 135, in

support of their contention that in cases of serious fraud which make out a virtual case of a criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by the Civil Court, the Court must sidetrack the arbitration agreement by dismissing an application under Section 8 and proceed with the suit on merits.

8. The scope of proceedings under Section 11(6) of the said Act has been explained by the Hon'ble Supreme Court in the case of **Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re, (2024) 6 SCC 1.**
9. From the law laid down in paragraphs 163 to 169 of the above decision, Section 11(6-A) of the said Act continues to remain in force, and it is incumbent upon the Court to give true effect to the legislative intent. Section 11(6-A) *inter alia* provides that the High Court, while considering any application under Section 11(6), shall, notwithstanding any judgment, decree or order of any Court, confine itself to the examination of the existence of an agreement.
10. Further, the Hon'ble Supreme Court has explained that the use of the term "examination" connotes that the scope of the power is limited to a *prima facie* determination. The Referral Courts need only consider one aspect to determine the existence of an arbitration agreement: whether the underlying contract contains an arbitration clause that provides for the arbitration of the disputes that 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 based on Section 7. Similarly, the validity of an arbitration agreement, under Section 7, should be limited to the formal requirements, such as the requirement that the agreement be in writing. The court held that such an interpretation also gives true effect to the doctrine of Kompetenz-Kompetenz by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.

11.The Hon'ble Supreme Court further held that though the burden of proving the existence of the 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 for a mini trial to determine the existence or validity of the arbitration agreement. The determination of the existence and validity of an arbitration agreement based on evidence ought to be left to the Arbitral Tribunal.

12.The Hon'ble Supreme Court pointed out that Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court must inspect or scrutinise the dealings between the parties for the existence of an

arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry.

13. On the other hand, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes the adjudication of disputes after the admission of evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of an arbitration agreement, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement.
14. The Hon'ble Supreme Court further clarified that when the Referral Court renders a *prima facie* opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award will be bound by such a *prima facie* view. If the Referral Court takes a *prima facie* view of the existence of an arbitration agreement, it still allows the Arbitral Tribunal to examine the issue in depth. Such a legal approach will help the Referral Court in weeding out *prima facie* non-existent arbitration agreements. It will also protect the jurisdictional competence of the Arbitral Tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement.
15. In this case, there is no dispute or in any event no serious dispute regarding the existence of the arbitration clause in the agreement between the parties.
16. The contention that the agreement itself is terminated and, therefore, the arbitration clause would not survive, cannot be accepted. It is

well settled that the arbitration clause has its own independent existence and would survive notwithstanding the termination of the agreement in which it is contained.

17. The arguments that a criminal prosecution is pending against the company and its directors, or that the Directors are still imprisoned, are quite irrelevant to the issues that arise in this petition. So also, the argument that the respondents' documents have been seized by the ACB is not a good ground to decline reference of the dispute to arbitration. To retrieve the document or copies thereof, the respondents can always take appropriate steps by following the law.
18. The argument upon non-arbitrability can best be considered by the Arbitral Tribunal once the same is constituted. At this stage, merely because a criminal prosecution is launched against the applicant-Company and its Directors in relation to the transactions arising out of or connected with the agreement for production and supply of Holograms, would be too premature to say that the dispute now raised must be characterised as "non-arbitrable". Besides, considering the limited scope of proceedings under Section 11(6), it would not be appropriate to entertain such objections at the referral stage itself.
19. The argument in this case is not that the arbitration clause is embedded in a document alleged to be a forgery or the product of fraud. Therefore, by alleging that the Petitioner has committed a fraud during the execution of the contract cannot be a good ground to not refer the parties to arbitration.

20. In **Rajia Begum** (supra), after considering the decision in **A. Ayyasamy** (supra), the Hon'ble Supreme Court has held that where the dispute relating to the agreement i.e. admission deed dated 17.04.2007, involved serious allegations going to the root of the arbitration agreement, the same would not be amenable to arbitration at the stage at which the application under Section 8 of the said Act was filed.
21. The Hon'ble Supreme Court reasoned after referring to the decision in **Managing Director Bihar State Food and Civil Supply Corporation Limited v. Sanjay Kumar**, 2025 SCC OnLine SC 1604, reasoned that the allegations of fraud with respect to the arbitration agreement itself stand on a different footing. This position is generally recognised as a dispute that falls within the realm of non-arbitrability. In such cases, the Arbitral Tribunal will not examine the allegations of fraud but will consider the submissions only for the purpose of examining exclusion of jurisdiction.
22. In the present case, there are no allegations regarding the very entering into the agreement that contains the arbitration clause. Thus, the allegations do not strike at the very root of arbitral jurisdiction to classify the disputes as non-arbitrable.
23. Therefore, upon considering the law laid down in **Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re** (supra) and the decisions relied upon by the respondents, I am satisfied that this

application deserves to be allowed after overruling the objections raised on behalf of the learned counsel for the respondents.

24. However, the rejection of the objection is only in the context of the limited scope of proceedings under Section 11(6) and this will not preclude the respondents from raising all objections, including objections now raised before the Arbitral Tribunal. It is well settled that an order referring the parties to an Arbitral Tribunal and for that purpose, expressing any *prima facie* opinions, neither binds the parties nor the Arbitral Tribunal. Therefore, if such objections are raised by and on behalf of the respondents before the Arbitral Tribunal, the same will have to be considered in accordance with law and on their own merits without being influenced by the observations made in this order.

25. Accordingly, this application is disposed of by making the following order: -

(A) Hon'ble Mr. Justice Narendra Nath Tiwari, a Former Judge of this Court, presently residing at 673 F/Jatin Chandra Road (J.C. Road), Burdwan Compound, Lalpur, Ranchi-834001, (email address:- justicennt@gmail.com) is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the agreement referred to above.

(B) All contentions and objections on behalf of the respondents, including the contention regarding the non-existence of the

arbitral clause, are left open for decision by the Arbitral Tribunal so constituted.

- (C) A copy of this order should be communicated to the learned Sole Arbitrator by the advocates for the Applicants within ten days from today. The applicants shall provide the parties' contact and communication particulars to the Arbitral Tribunal, along with a copy of this order.
- (D) The learned Sole Arbitrator is requested to forward the statutory statement of disclosure under Section 11(8) read with Section 12(1) of the said Act to the parties within a period of two weeks from the receipt of a copy of this order;
- (E) The parties shall appear before the learned Sole Arbitrator on such date and at such place (at Ranchi, Jharkhand) to obtain appropriate directions with regard to the conduct of the arbitration, including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings, etc.
- (F) At the above-referred meeting, the parties shall provide a valid and functional email address, along with the mobile numbers of the respective advocates of the parties, to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration and;
- (G) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance and shall be subject to any final Award that may be passed by the Tribunal in relation to the costs.

26. Once again, it is clarified that nothing in this order is an expression or an opinion on the merits of this matter. The Arbitral Tribunal now appointed shall issue directions to the parties on how to proceed further in the matter.

27. This Arbitration Application is disposed of in the above terms without any order for costs. Pending I.A.s, if any, stand disposed of.

28. All concerned can act on an authenticated copy of this order.

(M.S. Sonak, C.J.)

April 10, 2026

Manoj/Sharda/Cp.2

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