2026:PHHC:063683

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ARB-127-2026 (O&M)
Date of Decision:22.04.2026

Santosh Rani

.....Petitioner

Versus

Bathinda Development Authority and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Lupil Gupta, Advocate and
Mr. Harshdeep Singh, Advocate for the petitioner.

Ms. Anu Chatrath, Senior Advocate with
Ms. Dhamanpreet Kaur, Advocate for the respondents.

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JASGURPREET SINGH PURI J.(Oral)

1. Learned counsel for the petitioner Mr. Harshdeep Singh, submitted that there is a valid agreement (Annexure P-1) between the parties, which contains Arbitration Clause No. 25 pertaining to the dispute resolution mechanism. He submits that as per Clause 25(v), all disputes or differences in respect of which the decision is not final and conclusive shall, at the request of either party made through a communication sent by registered A.D. post, be referred to the sole arbitration of the Superintending Engineer of the Bathinda Development Authority, which is the respondent in the present petition.

2. He further submitted that the Superintending Engineer of the respondent-department cannot be appointed as an arbitrator on account of conflict of interest, in view of Section 12(5) of the Act as well as the law laid down by the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, 2020 (20) SCC 760.*** He further submitted that once a dispute has arisen between the parties, the petitioner had earlier invoked the pre-arbitration dispute resolution mechanism as contained in Clause 25(ii) of the aforesaid contract by issuing a notice (Annexure P-8) dated 15.09.2025 to the Divisional Engineer (C-I) for settlement of the dispute; however, no action was taken by the respondent in this regard. Thereafter the petitioner had issued a notice dated 22.12.2025 under Section 21 of the Act vide Annexure P-9 requesting for appointment of an independent arbitrator under Clause 25 (v), (vi) and (ix) of the contract and proposing the names of two arbitrators, however, no action was taken by the respondents. 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 Senior Counsel appearing on behalf of the respondents submitted that there is no dispute regarding the existence of the agreement (Annexure P-1) or the arbitration clause contained therein, and there is also no dispute regarding the invocation of the arbitration clause by the petitioner by issuing notice (Annexure P-9) to the respondents, to which the respondents did not reply. She, however,

submitted that firstly the present petition is premature, since the dispute is required to be resolved in the first instance at the level of the Engineer-in-Charge as per Clause 25 of the contract and according to the respondents, the said pre-arbitration mechanism was not properly resorted to by the petitioner.

4. Secondly, she submitted that the petitioner had earlier filed a writ petition before this Court bearing CWP No. 4542 of 2018, which was disposed of vide judgment dated 26.02.2018 with a direction to pass a speaking order, and thereafter a speaking order was passed pursuant thereto; therefore, the dispute is not arbitrable. Thirdly, she submitted that the petitioner-contractor did not complete the work within the stipulated time period and till date, the petitioner-contractor has neither applied for extension of time nor has submitted the final bill for the work executed and has further failed to furnish documents relating to quality control and verification of the work executed, therefore, the dispute is non-arbitrable and cannot be referred to arbitration.

5. Fourthly, learned Senior Counsel for the respondents submitted that the present petition under Section 11 of the Act has been filed belatedly, inasmuch as the speaking order pursuant to the earlier writ petition was passed in the year 2018, whereas the petitioner issued notices (Annexure P-8 and Annexure P-9) only in the year 2025. Accordingly, it is prayed that the present petition be dismissed.

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

7. The existence of the agreement containing the arbitration clause, as well as the invocation of the said clause by issuance of notice, has not been disputed by the learned Senior Counsel for the respondents.

8. Learned Senior Counsel for the respondents has, however, raised four-fold objections as aforesaid. So far as the first objection that the petitioner has not resorted to the pre-dispute mechanism and that the present petition is premature, is concerned, the same is not sustainable, as the petitioner had earlier issued a notice to the respondents vide Annexure P-8 specifically stating that the same had been issued under Clause 25(ii) for settlement of the dispute; therefore, the plea taken by learned Senior Counsel for the respondents is not sustainable. Even otherwise, the issue as to whether such a plea can be raised to oppose appointment of an arbitrator under Section 11 of the Act is no longer *res integra*. The said proposition stands settled by 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*. 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.*
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> *[…]*
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> *(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."

9. 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 11of 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."

10. In view of the above, the first objection raised by learned Senior counsel for the respondents is hereby rejected.

11. So far as the second objection raised by learned Senior Counsel for the respondents, that the petitioner had earlier filed a writ petition before this Court which was disposed of with a direction to pass a speaking order, is concerned, the same is not sustainable in view of the fact that mere filing of a writ petition, which was disposed of with a direction to the respondents to pass a speaking order on the claim of the petitioner, cannot be fatal to the petitioner's claim for appointment of an arbitrator under Section 11 of the Act, therefore, this objection is also rejected.

12. So far as the third objection raised by learned Senior Counsel for the respondents that the petitioner failed to apply for extension of time, to submit the final bill of the work and to furnish documents relating to quality control and verification of the work executed, is concerned, the same is also not sustainable in view of the fact that the aforesaid objections, if any, cannot be examined at the stage of reference under Section 11 of the Act and the same can always be raised at an appropriate stage before the learned Arbitrator, if so required, therefore, the third objection raised by learned Senior Counsel for the respondents is also rejected.

13. So far as the fourth objection raised by learned Senior Counsel for the respondents is concerned, the same is liable to be rejected in view of

the fact that the question as to whether the claim is belated or not falls within the domain of the arbitral tribunal or arbitrator and not within the scope of this Court while exercising jurisdiction under Section 11 of the Act, in view of the law laid down by the Hon'ble Supreme Court in ***SBI General Insurance Company Limited Vs. Krish Spinning (supra)*** *as well as in* ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re (supra).***

14. This Court would, therefore, have to see whether the twin conditions for appointment of an arbitrator under Section 11 of the Act at the reference stage are satisfied. Both the twin conditions, namely, the *prima facie* existence of an arbitration clause and its invocation, stand satisfied. The essential requirements for appointment of an arbitrator are therefore fulfilled in the present case, as the same are not in dispute.

15 In view of the aforesaid facts and circumstances, the present petition is allowed. Mr. Ranjit Singh Bajaj, Advocate, resident of House No.1395, Sector 40-B, Chandigarh, Mobile No.99144-21241 and 94171-21241, E-mail: rs-bajaj@hotmail.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.

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

17. Fee shall be paid to learned Arbitrator in accordance with the

Fourth Schedule of the Arbitration Act, as amended.

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

19. A request letter alongwith a copy of the order be sent to Mr. Ranjit Singh Bajaj, Advocate.

22.04.2026 **(JASGURPREET SINGH PURI)**
shweta **JUDGE**

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