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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ARB-327-2025 (O&M)
Date of Decision: 23.12.2025

KARAN PAUL

....Petitioner(s)

Versus

K P H DREAM CRICKET PRIVATE LIMITED AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Kunal Vajani, Advocate,
Mr. Vipul Joshi, Advocate,
Mr. Shubhang Tandon, Advocate,
Mr. Ishan Puri, Advocate,
Ms. Favi Singla, Advocate,
for the petitioner.

Mr. Deepak Sabharwal, Advocate,
for respondent No.1.

Mr. Amit Jhanji, Senior Advocate assisted by
Mr. Shrey Goel, Advocate,
Mr. Ankur Sehgal, Advocate,
Mr. Shubham Mahajan, Advocate,
for respondent No.2.

Mr. Anand Chhibbar, Senior Advocate with
Mr. Amitabh Tewari, Advocate,
for respondent No.3.

Mr. Sangram S. Saron, Advocate and
Mr. M. B. Rajwade, Advocate,
for respondent No.4.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') praying for appointment of a Sole Arbitrator.

2. Mr. Puneet Bali, learned Senior Counsel with Mr. Kunal Vajani, Advocate for the petitioner submitted that the petitioner and the respondents are shareholders and Directors of a Company namely, K.P.H. Dream Cricket Private Limited. He submitted that a specific clause exists in the Articles of Association vide Clause 67, which provides that whenever any difference or dispute arises between the Company on the one hand and any of the members or their heirs, executors, administrators, nominees or assignees on the other hand or between the members inter-se or their respective heirs, executors, administrators, nominees or assigns inter-se touching the true intent, construction or incident or consequences of these Articles or touching anything done, executed emitted or suffered in pursuance thereof or to any affairs of the Company, every such disputes or differences shall be referred to the sole arbitration of the Chairman. He further submitted that a dispute arose between the parties in view of the fact that there was a resolution passed by the Company, wherein it was decided that the Chairman of the Company shall be appointed on rotational basis and various other issues were also in dispute and in consonance with the aforesaid Clause 67, the petitioner invoked the aforesaid arbitration clause by issuance of a notice dated 18.04.2025 under Section 21 of the Act by describing the claims in the aforesaid notice and proposing a list of names for appointment of a Sole Arbitrator. He submitted that to the aforesaid notice, reply was given

by the respondents wherein they have stated that the dispute which has been raised is not an arbitrable dispute and the same cannot be referred to arbitration. A detailed reply has been filed by the respondents with regard to the same. He submitted that since the mechanism provided in the aforesaid Clause 67 for appointment of an Arbitrator with the consent of the parties has failed, the present application has been filed under Section 11 of the Act for appointment of an independent Sole Arbitrator.

3. Mr. Amit Jhanji, learned Senior Counsel for respondent No.2 and Mr. Anand Chhibbar, learned Senior Counsel for respondent No.3 have submitted that the present petition which has been filed for appointment of an Arbitrator is liable to be dismissed. They submitted that although there is no dispute with regard to existence of Clause 67 in the Articles of Association and the issuance of notice by the petitioner in this regard but at the same time, the dispute cannot be referred to the Arbitrator for various other reasons. In this regard, they submitted that the dispute which is so raised in the notice issued by the petitioner is not an arbitrable dispute as it is an inherent decision which is projected to be the dispute by the petitioner and when there is such kind of dispute within the Company, then the remedy available with the aggrieved person is to file a petition on the ground of oppression and mismanagement to challenge the resolution but an application under Section 11 of the Act cannot be filed even though an arbitration clause exists.

4. Learned Senior Counsels further submitted that apart from the above, the present petition is not maintainable in view of the fact that the petitioner had earlier filed an application under Section 9 of the Act before

learned Commercial Court, Chandigarh seeking injunction with regard to the aforesaid relief claimed that a person namely, Munish Khanna cannot be appointed as a Director. The aforesaid application was dismissed by the learned Commercial Court, which was assailed by the petitioner by filing an appeal before the Commercial Appellate Division of this Court. The aforesaid appeal was disposed of by a Division Bench of this Court on 26.11.2025 in which the petitioner himself submitted that now the dispute does not exist and therefore, the aforesaid appeal was disposed of and in view of the same, the petitioner cannot invoke the provisions of Section 11 of the Act seeking arbitration.

5. Mr. Amit Jhanji, learned Senior Counsel for respondent No.2 further submitted that respondent No.4 had also filed a civil suit against the petitioner, which was rejected under Order VII Rule 11 CPC, wherein the petitioner had supported the case of respondent No.4 and in which it was also held that the appropriate remedy lies under the Companies Act and therefore, the present petition under Section 11 of the Act is not maintainable.

6. Mr. Sangram S. Saron, Advocate appearing on behalf of respondent No.4 submitted that the present petition may be allowed in view of the fact that the provision of Section 11 of the Act is an independent provision and in case the essential conditions for invoking arbitration are satisfied by filing of a petition under Section 11 of the Act, then irrespective of the fact that any other separate remedy is available under the Companies Act, the same can always be allowed. He also submitted that the subject matter of the civil suit, which was filed by respondent No.4 was with regard

to the appointment of the aforesaid Munish Khanna as non-executive Director on the Board of the Company.

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

8. The existence of the arbitration clause i.e. Clause 67 and the issuance of notice under Section 21 of the Act vide Annexure P-31 is not in dispute. The aforesaid Clause 67 is reproduced as under:-

> *"67. Whenever any difference or dispute arises between the Company on the one hand and any of the members or their heirs, executors, administrators, nominees or assignees on the other hand or between the members inter-se or their respective heirs, executors, administrators, nominees or assigns inter-se touching the true intent, construction or incident or consequences of these Articles or touching anything done, executed emitted or suffered in pursuance thereof or to any affairs of the Company, every such disputes or differences shall be referred to the sole arbitration of the Chairman, for the time being of the Company or to same person appointed by both parties and it will be so objection that he is an Officer of the Company or that he had to deal with such disputes or differences and it is only after an Award is given by such Arbitrator that the parties will be entitled to take any other proceedings relating to such disputes, differences and award. The Award made by such Arbitrator shall be final and binding on the parties. The arbitration shall be conducted according to the provisions of the Indian Arbitration and conciliation Act, 1996".*

9. A perusal of the aforesaid would show that there is a *prima facie* existence of an arbitration clause to the effect that whenever any difference or dispute arises between the Company on the one hand and any

of the members or their heirs, executors, administrators, nominees or assignees on the other hand or between the members inter-se or their respective heirs, executors, administrators, nominees or assigns inter-se touching the true intent, construction or incident or consequences of these Articles or touching anything done, executed emitted or suffered in pursuance thereof or to any affairs of the Company, every such disputes or differences shall be referred to the sole arbitration of the Chairman. When reply was filed by the respondents to the notice under Section 21 of the Act, they raised various objections, particularly pertaining to the fact that the issue is not arbitrable.

10. An argument was raised by the learned Senior Counsels for respondents No.2 and 3 that the petitioner had earlier filed an application under Section 9 of the Act seeking interim relief, which was declined and when an appeal was filed before the Commercial Appellate Division of this Court**,** the same was also disposed of on the basis of the statement of the petitioner. The aforesaid judgment was supplied to this Court during the course of arguments and a perusal of the same would show that in para No.13, it was observed by a Division Bench of this Court by way of a clarification that the observations made by the Commercial Court in the judgment passed by it will not prejudice the rights and contention of the parties in appropriate proceedings where the issue has to be decided as to whether the dispute is arbitrable or not. It was further observed that the claim of the parties on merits on this aspect is left open for appropriate adjudication at the competent level. Para No.13 of the aforesaid judgment is reproduced as under:-

> *"13. Considering the nature of proceedings under Section 9 of the Act of 1996, we are of the view that the observations and findings of the Court in proceedings under Section 9 of the Act of 1996 would only be in aid of final determination of cause. It is the petitioner-Karan Paul, who has invoked jurisdiction of the Court under Section 9 of the Act of 1996 and once he states that the cause for pressing the petition under Section 9 of the Act of 1996 no longer survives/subsists; this Court would not be inclined to adjudicate the legality of the order passed by the Commercial Court particularly when the applicant has not availed any benefit in such proceedings. The observations and findings of the Commercial Court itself are inter-locutory in nature and do not attach any finality to the lis on merits. We, therefore, clarify that the observation made by the Commercial Court, in Para 22 of the impugned judgment, will not prejudice the rights and contention of the parties in appropriate proceedings where the issue has to be decided as to whether the dispute is arbitrable or not? The claim of the parties on merits on this aspect is left open for appropriate adjudication at the competent level."*

11. Therefore, the objection which was taken by learned Senior Counsels by relying upon the aforesaid judgment passed by a Division Bench of this Court is not sustainable. It was observed by the Division Bench that all the matters as to whether the dispute is arbitrable or not will be left open for appropriate adjudication at the competent level and therefore, this Court is of the considered view that the Arbitrator would be the appropriate competent authority to adjudicate upon the dispute and therefore, the appointment of Arbitrator will be in consonance with the aforesaid judgment of the Division Bench of this Court. The submission

made by the learned Senior Counsels for the respondents with regard to the aforesaid objection is rejected.

12. So far as the other objection raised by the learned Senior Counsel for the respondent No.2 that respondent No.4 had filed a civil suit and the same was rejected on an application filed under Order VII Rule 11 CPC, would also have no bearing upon the present petition under Section 11 of the Act because that civil suit was filed by respondent No.4 and not by the present petitioner and apart from the above, learned counsel for respondent No.4 had submitted that subject matter of the aforesaid civil suit was only confined to appointment of one Munish Khanna, whereas as per the learned Senior Counsel for the petitioner, in the notice under Section 21 of the Act the basic dispute is pertaining to the aspect of rotation of the Chairmanship. Therefore, this argument of learned Senior Counsel for respondent No.2 is also rejected.

13. So far as the arguments raised by learned Senior Counsel for respondent No.3 that at the most it was a case of oppression and mismanagement and a petition under the Companies Act could have been filed, the same is also not sustainable in view of the fact that oppression and mismanagement cannot be looked into by this Court as it pertains to arbitrability of the dispute and at this stage, only existence of arbitration clause is to be seen and invocation of arbitration based upon the arbitration clause is always maintainable.

14. So far as one common objection raised by learned Senior Counsels for respondents No.2 and 3 that the dispute is not arbitrable and therefore, it cannot be referred for arbitration is concerned, the same is also

not sustainable in view of the settled law that this Court under Section 11 of the Act at the reference stage is not to look into as to whether the dispute is arbitrable or not and it is also a settled law that this Court would not hold a mini trial in this regard because all these issues as to whether the claim is arbitrable or not can be raised and are to be adjudicated in accordance with law by the Arbitrator.

15. The law pertaining to the aforesaid facts and circumstances has been settled by 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* and therefore, the law is no longer *res integra*. 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.*
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> *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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> *(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).*
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> *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"*
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> *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."*

16. 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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> *xxxx-xxxx-xx xx*
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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 de-*

termination. 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."

17. Recently, the Hon'ble Supreme Court in ***Office for Alternative Architecture v. Ircon Infrastructure and Services Ltd., 2025 SCC Online SC 1098***, dealt with this issue and observed that whether a matter falls under the excepted category cannot be considered at the time of the reference stage under Section 11 of the Act. The relevant portion of the aforesaid judgment is reproduced as under :-

> ***"6.****The short question that falls for our consideration is whether while exercising power under Section 11 of the 1996 Act, the Court has to confine its consideration as to the existence of an arbitration agreement between the parties. If so, whether it would be permissible, while exercising jurisdiction under Section 11, to hold that some of the claims raised are non-arbitrable or fall within excepted category.*
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> ***7.*** *Sub-section (6A) of Section 11, which was inserted by Act 3 of 2016, with effect from 23.10.2015, makes it clear that while considering an application under sub-section (4) or sub-section (5) or sub-section (6), the Supreme Court or the High Court, as the case may be, shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.*
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> ***8.*** *Act 33 of 2019 omitted sub-section (6A) but the amending Act has not been notified thus far. In consequence, sub-section (6A) of Section 11 of the 1996 Act remains in the statute book.*
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> ***9.****The statement of objects and reasons of the 2015 amendment with reference to insertion of sub-section (6A) in Section 11 of the 1996 Act, reads thus:*
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> *"(iii) an application for appointment of an Arbitrator shall be disposed of by the High Court or the Supreme Court, as the case may be, as expeditiously as possible and an*

endeavour should be made to dispose of the matter within a period of 60 days.

(iv) to provide that while considering any application for appointment of Arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues."

10.*The significance of the use of the expression "not other issues" in the statement of objects and reasons of the 2015 amendment was noticed by a seven-Judge bench of this Court in In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 18995, and it was observed:*

> *"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 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."*

11. *Relying on the above observations made by this Court in In Re: Interplay (supra), a three-judge bench of this Court in "SBI General Insurance Co. Ltd. v. Krish Spinning6" observed:*

> *"114. ….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 v. Durga Trading Corporation7 (supra) and adopted in*

> *'NTPC v. SPML Infra Limited8 (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)".*
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> *(Emphasis Supplied)*
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> ***12.****As the above decision has been rendered by a three-Judge bench of this Court after considering the seven-Judge bench decision of this Court in In Re: Interplay (supra), we are of the view that the respondent cannot profit from certain observations made by a two-Judge bench of this Court in Emaar (supra). In our view, therefore, the High Court fell in error in bisecting the claim of the appellant into two parts, one arbitrable and the other not arbitrable, when it found arbitration agreement to be there for settlement of disputes between the parties. The correct course for the High Court was to leave it open to the party to raise the issue of non-arbitrability of certain claims before the arbitral tribunal, which, if raised, could be considered and decided by it."*

18. In view of the aforesaid facts and circumstances, this Court is of the considered view that all the pre-requisite conditions for invocation of Section 11 of the Act remain satisfied and therefore, the present petition is allowed. Hon'ble Mr. Justice Harinder Singh Sidhu, a former Judge of this Court, resident of House No.15, Sector 2-A Chandigarh, Mobile No. 8558809912, 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.

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

20. As per learned counsels for parties, the claim in the present petition is non-monetary in nature, the relief sought for has to be quantified in terms of the facts of the dispute and the fee of the Arbitrator shall depend upon such amount. Therefore, the Arbitrator shall fix his fee in view of Section 31A of the Act.

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

22. A request letter alongwith a copy of the order be sent to Hon'ble Mr. Justice Harinder Singh Sidhu, a former Judge of this Court.

23.12.2025 **(JASGURPREET SINGH PURI)**

rakesh **JUDGE**

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