IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ARB-278-2022 (O&M)
Date of Decision: 18.02.2026

M/s Jones Lang Lasalle Building Operations Pvt. Ltd.

.....Petitioner

Versus

Barnala Builders and Property Consultants

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Dibya Nishant, Advocate and
Mr. Shashikant Singh, Advocate for the petitioner.

Mr. Jatin Bansal, Advocate for the respondent.

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JASGURPREET SINGH PURI J.(Oral)

CM-22601-CII-2025

1. The present application has been filed seeking permission to place on record the complete copy of Annexure P-2, namely, the original Management Service Agreement dated 28.07.2017.

2. Learned counsel for the petitioner submitted that the present application has been filed in pursuance of the order dated 15.10.2025 passed by this Court, whereby an opportunity was granted to the petitioner to place on record the complete copy of Annexure P-2, as the earlier Annexure P-2 filed along with the petition was an incomplete document. The petitioner was directed to file the aforesaid document within a period

of seven working days. He submitted that an application for placing on record Annexure P-2 was filed in the Registry of this Court by way of e-filing on 30.10.2025 and a photocopy thereof has been supplied to this court. The aforesaid photocopy of the e-filing is taken on record.

3. He further submitted that the original application was filed within a period of seven working days as directed by the Court, however, due to certain objections raised by the Registry, the petitioner has filed the present fresh application. Although the present application is technically beyond the period granted by the aforesaid order but the original filing was made within the prescribed time. He submitted that the present document i.e. Annexure P-2, is the original document which is in the nature of the Management Service Agreement, duly signed by both the parties and it also contains an arbitration clause i.e. Clause No. 16.1. Therefore he prayed that the same may be permitted to be taken on record.

4. On the other hand, learned counsel appearing for the respondent has objected to the same and submitted that the aforesaid document cannot be permitted to be taken on record as it was filed beyond the period of seven days. He submitted that although an application had earlier been filed on 30.10.2025, the petitioner did not pursue the aforesaid application for placing the document on record and thereafter filed a fresh application after a period of seven days and only seven working days had been afforded to him vide order dated 15.10.2025 and on this ground the application is liable to be dismissed. He further submitted that even when the earlier application dated 30.10.2025 was filed, no copy thereof was

supplied to the respondent and in respect of which a complaint has already been made to the Registry of this Court which is stated to be pending. Learned counsel also objected that the document sought to be taken on record is not Annexure P-2.

5. After hearing learned counsel for the parties and perusing the order dated 15.10.2025 passed by this Court, whereby the petitioner was permitted to file the complete copy of Annexure P-2 within seven working days, this Court finds that the petitioner had filed the said document on 30.10.2025 which falls within seven working days as there were intervening holidays in this Court. Although the application was not listed as it was not passed by the Registry, the petitioner thereafter filed the present application which is now under consideration. This Court is of the considered view that it would be too hyper-technical to reject the prayer of the petitioner for placing on record the aforesaid Annexure P-2 on the ground that it was beyond the period of seven working days, when in fact the document had been filed within the stipulated period. The factum of filing on 30.10.2025 has not been disputed by learned counsel for the respondent, though it is contended that the same was not numbered. Therefore, in the interest of justice, this Court deems it fit and proper to accept the prayer of the petitioner and permit him to place on record the aforesaid Annexure P-2, being the original agreement executed between the parties and duly signed by them.

Main case

6. The present petition has been filed under Section 11(6) of the

Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeking appointment of an Arbitrator on behalf of the respondent to adjudicate the disputes and differences between the parties which have arisen under the Management Service Agreement and the same has been pending before this Court since the year 2022. The petitioner by way of the aforesaid application has placed on record the original Property Management Service Agreement executed between the parties.

7. Learned counsel for the petitioner submitted that the aforesaid agreement is binding upon both the parties and is duly signed by them. It contains an arbitration clause i.e.Clause 16.1 relating to Governing Law and Dispute Resolution. It was so agreed between the parties that all or any disputes arising out of or touching upon or in relation to the terms of this Agreement including interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. He submitted that the arbitration proceedings are to be governed by the Arbitration and Conciliation Act 1996 as amended from time to time. The proceedings are to be held at an appropriate location in Zirakpur by a panel of three arbitrators. Each party has the right to appoint one arbitrator of its choice and the two appointed arbitrators shall appoint the head of the panel with the written consent of both the parties. The decision of the panel of arbitrators shall be final and binding upon the parties. The arbitration proceedings shall be conducted in English language.

8. He further submitted that when disputes arose between the

parties and the same could not be settled amicably, the petitioner served a notice dated 21.10.2021 upon the respondent vide Annexure P-13 invoking the arbitration clause and nominated a former Judge of this Court as its nominee Arbitrator in accordance with the said clause. However no response was received from the respondent and therefore the present petition has been filed seeking appointment of an Arbitrator by this Court on behalf of the respondent.

9. On the other hand learned counsel for respondent submitted that so far as the original agreement which has now been placed on record by way of miscellaneous application is concerned the same is not disputed by him and even the signatures of the respondent thereon are also not disputed. However his objection is that the agreement which is now placed on record as Annexure P-2 is not the same document which was originally filed along with the main petition as Annexure P-2 and therefore an Arbitrator may not be appointed by this Court. He further submitted that when the petitioner had earlier filed some other document as Annexure P-2 this Court vide order dated 15.10.2025 granted an opportunity to file the complete copy of Annexure P-2. However instead of filing the same document the petitioner has now filed another agreement as Annexure P-2 by way of application which according to him cannot be considered by this Court.

10. He further submitted that the notice at Annexure P-13 is stated to have been sent through courier and email whereas as per the agreement attached by the petitioner the notice was required to be sent by way of

registered post to the authorised representative mentioned in the said agreement. Therefore on this ground also the petition is liable to be dismissed.

11. I have heard learned counsels for the parties.

12. The present case is of the year 2022 and has been pending for more than three years. Initially when the petition was filed the petitioner had attached an agreement dated 01.08.2017 as Annexure P-2 but the signature of one of the parties was missing. However liberty was granted to the petitioner to file the complete document as Annexure P-2 vide order dated 15.10.2025. Thereafter the petitioner filed the original agreement between the parties which is admittedly signed by both of them. The contents of both the agreements appear to be same. The objection raised by learned counsel for the respondent is that the document now filed is different from the document which was earlier annexed as Annexure P-2. In this regard, he referred to the number of the stamp papers which is different though the date remains the same. In other words learned counsel for the respondent has disputed the document which has now been placed on record as Annexure P-2 only on the ground that it is not the same document which was earlier attached with the petition. However the execution of the agreement which has now been placed on record by way of Annexure P-2 through miscellaneous application is not disputed. Similarly the signature of the respondent is also not in dispute.

13. So far as issuance of notice invoking Section 21 of the Act is concerned the same at Annexure P-13 was sent by courier/email but no

response was received from the respondent. However the objection of the respondent is that the notice was required to be sent through registered post to the authorised representative named in the agreement. A perusal of Annexure P-13 however shows that the notice is addressed to the respondent through its authorised representative or partner. The mode of dispatch is mentioned as courier and email.

14. The question therefore for consideration before this Court is whether while exercising powers under Section 11 of the Act this Court should go into the objections raised by learned counsel for the respondent pertaining to the issuance of notice under Section 21 of the Act and also with regard to the originality of the agreement now placed on record by the petitioner as Annexure P-2.

15. The law with regard to the scope and nature of jurisdiction to be exercised by this Court under Section 11 of the Arbitration and Conciliation Act, 1996 is no longer *res integra.* The same has been authoritatively 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*** and therefore, the issue stands conclusively settled. 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. […]*
>
> *(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."

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.

xx xx xx

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."

17. In view of the aforesaid settled position of law, it is now well settled that while making reference under Section 11 of the Act, the Court

is required to examine only the prima facie existence of an arbitration agreement and its invocation under Section 21 of the Act-nothing more and nothing less. So far as the document placed on record as Annexure P-2 by way of miscellaneous application is concerned the same is the original document and is duly signed by both the parties. The execution thereof has not been disputed even by learned counsel for the respondent. The said agreement contains an arbitration clause which is reproduced hereunder:

> *"16. GOVERNING LAW & DISPUTE RESOLUTION*
>
> *16.1. All or any disputes arising out or touching upon or in relation to the terms of this Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 as up to date or any statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at an appropriate location in Zirakpur by the penal of three arbitrator. Both the party to this agreement have right to appoint one arbitrator to their choice and head of the*

penal will be appointed by both the arbitrator with the written consent of both the parties to the agreement. The decision of penal of arbitrator will be final and binding upon the parties and could not be challenge in any court of law. The arbitration proceedings shall be conducted in English language."

18. As to whether the aforesaid document is different from Annexure P-2 which was earlier filed with the petition is not the subject matter of consideration before this Court. Once the original agreement has been placed on record which is signed by both the parties and contains an arbitration clause this Court is satisfied that *prima facie* there exists an arbitration clause in the agreement executed between the parties.

19. So far as the objection regarding invocation of the arbitration clause by issuance of notice under Section 21 of the Act is concerned, a perusal of the notice shows that it was sent through courier and email to the respondent company and is stated to have been addressed through its authorised representative or partner. The objection that the notice ought to have been sent personally or by registered AD post is not sustainable. The question regarding validity of the notice or strict compliance of the mode of service as provided in the agreement would fall within the domain of learned Arbitrator and not within the limited scope of consideration of this Court while exercising powers under Section 11 of the Act in view of the settled law.

20. Consequently, the present petition is allowed.

Hon'ble Mr. Justice L.N. Mittal (Retd.), resident of # 93, Sector-4, Panchkula, Mobile No.9780008127, Email: lnmittal2@gmail.com is nominated by this Court as a second Arbitrator subject to compliance of statutory provisions including Section 12 of the Act. The Arbitrator nominated by the petitioner i.e. Hon'ble Mr. Justice Rajive Bhalla (Retd.) and the second Arbitrator appointed by this Court i.e. Hon'ble Mr. Justice L.N. Mittal (Retired) will nominate/select the Presiding Arbitrator thereby constituting an Arbitral Tribunal as per the arbitration clause.

21. Parties are directed to appear before the aforesaid learned Arbitral Tribunal on date, time and place to be fixed and communicated by learned Arbitral Tribunal at its convenience.

22. Fee shall be paid to learned Arbitrators constituting the aforesaid Arbitral Tribunal in accordance with the Fourth Schedule of the Arbitration Act, as amended.

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

24. A request letter alongwith a copy of the order be sent to Hon'ble Mr. Justice L.N. Mittal (Retd.).

25. Since the main case stands disposed of all the pending application(s) shall also stand disposed of.

18.02.2026 **(JASGURPREET SINGH PURI)**
shweta **JUDGE**

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